No. 2909

United States

Circuit Court of Appeals

For the Ninth Circuit.

TWENTY-ONE MINING COMPANY, a Corporation,

Appellant,

vs.

ORIGINAL SIXTEEN TO ONE MINE, INC., a Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

No. 2909

United States

Circuit Court of Appeals

For the Ninth Circuit.

TWENTY-ONE MINING COMPANY, a Corporation,

Appellant,

vs.

ORIGINAL SIXTEEN TO ONE MINE, INC., a Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index. Page

Index.

In the District Court of the United States, in and for the Northern District of California, Second Division.

IN EQUITY.

ORIGINAL SIXTEEN TO ONE MINE, INC., a Corporation,

Plaintiff,

vs.

TWENTY-ONE MINING COMPANY, a Corporation.

Defendant.

Bill of Complaint.

The ORIGINAL SIXTEEN TO ONE MINE, INC., the plaintiff, brings this, its Bill of Complaint, against the TWENTY-ONE MINING COMPANY, the defendant, and for cause of action, alleges:

I.

That ever since on or about the 13th day of January, 1910, the plaintiff, the Original Sixteen to One Mine, Inc., has been and now is a corporation, organized and existing under and by virtue of the laws of the State of California, having its office and principal place of business in the City and County of San Francisco, in said State, and at all of said times said plaintiff was and now is a citizen and resident of the said State of California.

II.

That ever since on or about the 22d day of January, 1909, the defendant Twenty-One Mining Company [1*] has been and now is a corporation

*Page-number appearing at foot of page of original certified Transcript of Record.

organized and existing under and by virtue of the laws of the State of Arizona, having its principal place of business in the City of Phoenix, in said State, and at all of said times said defendant was and now is a citizen and resident of the said State of Arizona.

III.

That for more than five years last past, the plaintiff, and its predecessors in title have been, and plaintiff is now, the owner of, in possession of, and entitled to the sole, immediate and exclusive possession of the Sixteen to One Quartz Mine or lode mining location, and of all the mineral ore, ore bearing rock, and metal existing and found to exist in said lode mining claim, by virtue of due compliance with the laws of the United States and of the State of California, pertaining to the location, ownership and possession of mining claims; said claim being situated in the Alleghany Mining District, in the County of Sierra, State of California, and more particularly described as follows:

BEGINNING at Corner No. 1 whence the quarter section corner between Section 34, T. 19 N., R. 10 E. M. D. M. and Section 3, T. 18 N., R. 10 E. M. D. M. bears South 15° 50′ E. four hundred and thirty-one (431) feet distant; thence north 34° 49′ west one hundred and twenty-one and 29/100 (121.29) feet to Corner No. 2; thence north 42° 49′ east two hundred and twenty and 6/10 (220.6) feet to Corner No. 3; thence north 53° 24′ east seventeen (17) feet to Corner No. 4; thence north 51° 24′ west

six hundred and twenty-two and 36/100 (622.36) feet to Corner No. 5; thence south 60° 49′ west seventy-six and 57/100 (76.57) feet to Corner No. 6; thence north 28° 45′ west six hundred forty-nine and 6/10 (649.6) feet to corner No. 7; [2] thence south 54° 18′ west two hundred and twenty-nine and 2/10 (229.2) feet to Corner No. 8, the same being the northerly end line of said claim; thence south 39° 44′ east three hundred and forty-nine (349) feet to Corner No. 9; thence south 6° 35′ east one hundred and seventeen and 43/100 (117.43) feet to Corner No. 10; thence south 58° west ninety-nine and 24/100 (99.24) feet to Corner No. 11; thence south 32° 02′ east fifty-four and 52/100 (54.52) feet, to Corner No. 12; thence south 57° 22′ west one hundred and twenty-two and 4/10 (122.4) feet to Corner No. 13; thence south 39° 37′ east nine hundred and twenty-seven and 8/10 (937.8) feet to Corner No. 14; thence north 54° 18′ east three hundred and fifty-three and 7/10 (353.7) feet to Corner No. 1, the place of beginning, said last mentioned line being the southerly end line of said claim.

IV.

That there exists within said Sixteen to One lode mining claim, so owned and possessed by plaintiff, as aforesaid, a lode or vein of rock in place carrying gold and other valuable metals and minerals, on which lode or vein the original discovery of said lode mining location was made; that said lode or vein, on its course or strike, traverses the said Sixteen to

One lode mining claim from end to end, crossing both the northerly and the southerly end lines thereof; and that the top or apex of said lode or vein is wholly included within the side lines of the said Sixteen to One lode mining claim.

That for more than five years last past, the plaintiff, and its predecessors in interest, have been and the plaintiff is now, the owner of and in possession of and entitled to the sole and exclusive possession of said vein through its entire depth, between planes drawn veritically downward through the northerly and the southerly end lines of said Sixteen to One lode mining claim; both planes being extended indefinitely in the direction of the dip of [3] said vein, except as the said possession of said segment of said vein on its dip has been interfered with by the unlawful entry upon said segment of said vein by the defendant as hereinafter set forth.

That said Sixteen to One vein, as hereinbefore described, on its downward course, so far departs from the perpendicular as to pass through the easterly side line of said Sixteen to One claim and into and beneath the surface of the adjoining Belmont, Valentine, and Tightner Extension lode mining claims claimed by defendant and beneath adjoining lode mining claims belonging to third parties, and that within said lode or vein there has existed at all times mentioned in this Bill of Complaint, and does exist, large quantities of ore and rock in place bearing gold and other valuable metals, which were and are so owned and possessed by plaintiff, and to which plaintiff had and has the sole and exclusive right to

search for and extract and remove; that until the entry upon said vein and ore by said defendant, as hereinafter set forth, plaintiff was in the sole and exclusive possession of the said vein and ore and in possession of the sole and exclusive right to search for, extract and remove said ore and rock in place bearing gold and other valuable metals.

V.

That said defendant claims and asserts adversely and in hostility to this plaintiff some estate, right, title and interest in and to said segment of said Sixteen to One vein or lode as above described and in pursuance of such asserted adverse claim said defendant is now and has been within three years last past willfully and unlawfully entering upon portions of said extralateral segment of said [4] vein lying between said vertical planes as above described and during a period of three years last past has willfully and unlawfully trespassed upon said segment of said vein and mined and extracted and converted to its own use valuable ore therefrom.

VI.

That said adverse and hostile claim so made by this defendant to any portion of said extralateral segment of said Sixteen to One vein lying between said vertical planes hereinbefore defined is without any right whatever, and that defendant has by means of its mine workings extracted and removed from said segment of said vein, the property of the plaintiff as hereinbefore alleged, gold and gold-bearing ores and metals of great value, the property of this plaintiff, as in this Bill of Complaint alleged, and

that the value of the same so extracted and removed by said defendant is to this plaintiff unknown, but said plaintiff is informed and believes, and upon such information and belief alleges that the value of such ores and metals is in excess of the sum of one hundred thousand ($100,000) dollars.

VII.

Plaintiff further alleges that said trespasses and acts hereinbefore referred to were done and committed by the defendant willfully, knowing that said ores extracted, as aforesaid, were not the property of said defendant, and that it had no right, title or interest therein, but knowing that the same were the property of said plaintiff; that defendant is still engaged, willfully and wrongfully, in extracting and removing gold and gold-bearing ores and metals, [5] the property of this plaintiff, from said segment of said vein on its dip and wrongfully and willfully continues in possession of the portion thereof which is physically controlled by the mine workings of said defendant and withholds possession thereof from this plaintiff; that defendant is now mining and extracting large quantities of rich and valuable ore from said vein on its said dip and within said extralateral segment of said vein belonging to this plaintiff, as hereinbefore set forth, and that a portion of such mining and extracting of ore has extended beyond the vertical boundaries of the mining claims to which defendant claims ownership and has penetrated beneath the surface of adjoining territory, to wit, the Eclipse Extension lode, which is neither owned nor controlled by said defendant, but

as plaintiff is informed and believes, and therefore alleges, is owned by third parties who are not parties to this action; and that this said defendant intends to and unless restrained by this court will continue to further intrude and trespass upon said segment of said vein, the property of this plaintiff, as in this Bill of Complaint described, and intends to and will make further mine workings and excavations, for the purpose of mining said ground and extracting and removing therefrom the mineral, ore, ore-bearing rock and metals therein, and intends to and will continue to dig up and extract and remove from said ground, the property of this plaintiff, and convert to its own use, the mineral, ore, ore-bearing rock and metals therein, and will take from said property of plaintiff the entire value thereof, to the great and irreparable injury of plaintiff. [6]

Plaintiff further avers that unless the said defendant, its agents, servants and employees are restrained and enjoined from intruding and trespassing upon said vein and ore, the property of this plaintiff, and making cuts, openings, and excavations thereon, and digging up, extracting and removing and carrying away from said property the mineral, ore, ore-bearing rock and metals therein contained, the value and substance of said property of plaintiff will be destroyed, and this plaintiff will suffer irreparable injury. That the said mineral, ore, ore-bearing rock and metals in said vein and mine of plaintiff constitute the sole value of said property. [7]

VIII.

Plaintiff avers that the matter in dispute in this action exceeds, exclusive of interest and costs, the sum of one hundred thousand ($100,000) dollars.

IX.

Plaintiff further avers that heretofore, to wit, on the 2d day of Aug., 1916, the plaintiff commenced an action at law against the defendant herein in the District Court of the United States in and for the Northern District of California, to recover of and from said defendant the possession of all and singular the property of plaintiff hereinbefore in this Bill of Complaint described, and to recover the sum of one hundred thousand ($100,000) dollars, as damages for the wrongs and injuries heretofore done and committed by said defendant upon the property of this plaintiff, as in this Bill of Complaint set forth. That said action at law is now pending in said court and undetermined. In consideration whereof, and for as much as plaintiff is entirely remediless in the premises at and according to the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that said defendant and its agents, servants, employees and confederates, if any, may be restrained from the doing of said acts therein, and from the continuance of the trespass and waste upon said vein and ore, the plaintiff hereby waiving an answer under oath to the Bill of Complaint, and to the matters and things therein stated and charged, prays: [8]

That said defendant may be required to set forth the nature and extent of its claims; that all adverse claims of said defendant may be determined by decree of this Court; that by its decree it be declared and adjudged that defendant hath not any estate or interest whatever in or to said Sixteen To One vein or lode as hereinbefore described or to any part or portion thereof; that it be declared and adjudged that the title of this plaintiff to such vein and to each and every part thereof on its dip between the northerly and southerly end line planes of said Sixteen To One lode mining claim, is good and valid; and that defendant be enjoined and forever restrained from asserting any claim whatsoever in or to said lode or vein throughout its length or dip adverse to plaintiff.

That a writ of injunction issue out of and in accordance with the rules and practice of this court, to be directed to said defendant, Twenty-one Mining Company, to restrain it, and its agents, servants, employees and confederates, from entering into or upon the vein and property of the plaintiff in this Bill of Complaint described, and from further working or mining thereon, or working or continuing any cut, opening, level, drift, or excavation within said vein, or on or in any part thereof, or excavating any mineral, ore, ore-bearing rock or metals therein, or digging up, extracting or removing any of said mineral, ore-bearing rock, metals or any mineral substance whatever from said segment of said vein hereinbefore described, and from in any manner hindering or obstructing plaintiff, or its agents, servants

and employees, or any or either of them, from working and mining said vein, or in or upon any of the mineral, ore, ore-bearing rock and metals therein; also a restraining order to the same effect, [9] until an application can be heard; and that upon the final determination of said action at law, such injunction may be made perpetual; that an account be taken for the waste committed, and that plaintiff have judgment therefor, and for such other and furthere relief as to this Court may seem meet and just.

(Signed) WILLIAM E. COLBY,
(Signed) GRANT H. SMITH,
Attorneys for Plaintiff.

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

S. B. Connor, being first duly sworn, deposes and says:

I am an officer of the corporation, original Sixteen To One Mine, Ins., plaintiff named in the foregoing complaint, to wit, Vice-president thereof, and I make this affidavit in behalf of said plaintiff.

I have read the foregoing Bill of Complaint and know the contents thereof; the same is true of my own knowledge, except as to such matters and things as are therein stated upon information or belief, and as to such matters I believe it to be true.

(Signed) S. B. CONNOR.

Subscribed and sworn to before me this 2d day of August, 1916.

[Seal] (Signed) EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 2, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

[Title of Court and Cause.]

Affidavit of Fred Searles, Jr.

State of California,
City and County of San Francisco,—ss.

Fred Searles, Jr., being first duly sworn, deposes and says:

That he is a citizen of the United States, and a resident of Nevada City, California;

That he is a mining geologist by profession, and has practiced his profession continuously for a period of seven (7) years; that he received his technical education at the University of California, and is a graduate of the department of mining and geology of that institution; that since graduation, he has practiced his profession in most of the mining states of the United States, in Canada, Alaska, Mexico and in other parts of the world; that he has for several years been familiar with the Alleghany Mining District, Sierra County, California, and has examined most of the operating mines in that locality.

That he has on three occasions visited the [11] Sixteen to One Mine, Inc., and that on the 13th and

14th days of July, 1916, he examined the said Sixteen to One Mine for the purpose of investigating the position of the apex of the vein exposed in said mine with relation to the boundary lines of the Sixteen to One quartz lode mining claim and the relation between the vein exposed in the workings of the Sixteen to One Mine and the vein exposed in the workings of the Twenty-one Mining Company and affiant further declares that he has examined said workings of said Sixteen to One Mine and a portion of the workings of the Twenty-one Mine lying underneath the Valentine mining claim, which workings are exhibited upon the map Exhibit "A" accompanying the affidavit of George O. Scarfe filed herewith, but that he was denied entrance to the major portion of the workings of the Twenty-one Mine.

Affiant declares that the tunnel known as the "upper tunnel" of the Sixteen to One Mine is driven upon a vein known as the Sixteen to One vein, and follows said vein continuously from the mouth to the face of said tunnel. That the course or strike of said vein is N. 40° W. and that said vein departs from the horizontal on its downward course to the N. E. with a dip or declination varying from 22° to 50°.

And affiant further declares that the said Sixteen to One vein is exposed at the surface of the earth at the mouth of the said upper tunnel or Tunnel No. 1 of the Sixteen to One Mine and that said exposure of said outcrop or apex of said Sixteen to One vein crosses the southerly end line of said Sixteen to One quartz lode claim at said point; and that said

outcrop or apex may be seen coursing northerly within the boundaries of said Sixteen to One claim for a distance [12] of about one hundred feet, being exposed on the Tightner road cutting. And that said apex of said Sixteen to One vein cannot be seen at the surface for a greater distance to the north, but is covered to the north with soil, loose rock, gravel and lava, said covering of gravel and lava increasing in depth to the north and attaining a depth of more than a hundred feet at the northerly end of said Sixteen to One quartz lode claim.

And affiant further declares that the dip of the said Sixteen to One vein at the face of said tunnel No. 1 of said Sixteen to One Mine is such that a raise driven upon said Sixteen to One vein from the face of said Sixteen to One upper tunnel or tunnel No. 1 would come to the surface of bedrock at a point within the exterior boundaries of said Sixteen to One quartz lode claim.

Affiant further declares that he has followed said Sixteen to One vein from said Sixteen to One upper tunnel upon its downward course from said upper tunnel through stopes to the tunnel called No. 2 or drain tunnel of the said Sixteen to One Mine, shown upon the map, Exhibit "A," and that said vein is continuous through said stopes and that said vein exposed in said lower tunnel is the same vein as that exposed in the said upper tunnel of the said Sixteen to One Mine; and that a raise now being driven from the face of the said drain tunnel or lower tunnel shown upon the map Exhibit "A" to follow said Sixteen to One vein upon its upward course from the

face of said lower tunnel will reach the surface of bedrock within the limits of the said Sixteen to One claim and will expose the apex of said Sixteen to One vein within the limits of said claim at a point about seven [13] hundred feet northerly of the southerly end line of said Sixteen to One claim. And affiant further states that the dip of the vein within the said upper tunnel and within the said lower tunnel or drain tunnel of the said Sixteen to One Mine is such that the vein will have its apex or outcrop, at the surface of bedrock, continuously within the external limits of said Sixteen to One claim from said southerly end line for this distance of about seven hundred feet northerly from said southerly side line. And affiant believes that the apex of the said Sixteen to One vein will continue to lie within the exterior boundaries of the said Sixteen to One quartz lode mining claim for a further distance beyond said seven hundred feet from said southerly end line and that it will lie within the exterior boundaries of said Sixteen to One claim throughout the length of said claim and that it will cross the northerly end line of said claim, but affiant is unable to declare that such will certainly be the case, but declares that excavations will have to be made under the lava and gravel that overlie the northerly end of the claim to determine accurately the location of said apex with respect to the exterior boundaries of the northerly end of said Sixteen to One claim.

Affiant further declares that the said Sixteen to One vein is continuous from its apex where exposed

at the surface of the earth at the southerly end of the Sixteen to One lode mining claim downward to the lower tunnel of said Sixteen to One Mine and below said tunnel and that he has followed said vein and traced said vein continuously to a level called the one hundred and fifty foot level, being about one hundred and fifty feet below the said lower tunnel of said Sixteen to One Mine. And that at said one hundred [14] and fifty foot level said Sixteen to One vein is intersected by a normal fault which interrupts said vein and displaced the portion of said vein lying to the east of said fault a distance of about fifty-five feet in a direction down the dip of the said fault; and that the lines of intersection of said vein by said fault are not horizontal lines, because said fault intersects said vein obliquely but that said lines decline to the north on said vein so that the interruption by said fault is at greater depth in a section north of the Sixteen to One shaft than is the case in a section through said shaft.

And affiant further declares that said interruption of the Sixteen to One vein by said fault is a casual displacement and in no wise conceals the identity of the two segments of the said Sixteen to One vein, but that the identity and former continuity of the said two segments is extremely apparent by reason of the similarity in course, dip, width, appearance and mineralogical content of said two segments, and also by reason of the existence of drag ore in said fault between said segments, the edge of the lower segment being dragged up toward the upper segment and the edge of the upper segment being

dragged down toward the lower segment, and that said interruption is such an interruption as is found with great frequency in many mines and is found in other mines of the said Alleghany District.

And affiant further declares that said Sixteen to One vein is continuous from said fault from a point about forty feet above the two hundred and fifty foot level of said Sixteen to One Mine, to the four hundred foot level of said mine, except that the quartz in said vein is broken at the three hundred foot level of said mine by a small fault which displaces said quartz from the upper side of the shaft to the lower side, and that he has traced said vein continuously through this interval; and that said vein is continuous from said four hundred foot level to the bottom of the Sixteen to One shaft, said vein lying for the most part about ten feet above said shaft and being visible in three short raises driven from the hanging-wall of said shaft through said vein.

And affiant further declares that he has caused [15] to be made from the surveys of the Sixteen to One Mine, and from the map Exhibit "A" accompanying the report of George O. Scarfe filed herewith, a vertical transverse section which shows correctly the relation of the tunnels and shaft and levels of the said Sixteen to One Mine, and of the Twenty-One Mine to each other and to the exterior side lines of the Sixteen to One claim. And affiant has depicted on said section the position of the apex of said Sixteen to One vein with relation to said exterior boundaries and has depicted the said vein on its downward course with relation to the position of

said workings and has depicted said fault which interrupts the vein between the one hundred and fifty foot and the two hundred an fifty foot levels of said Sixteen to One Mine; and affiant hereby incorporates said section, Exhibit "B" into this affidavit, and makes it a part hereof.

And affiant further declares that on the 26th day of July, 1916, he gained entrance from the lower of these three raises to the stopes and workings of the Twenty-One Mining Company, driven from the Twenty-One tunnel, and that these stopes and workings are driven on the same vein, namely, the Sixteen to One vein, having its top or apex within the Sixteen to One lode mining claim. And that he examined said vein in said stopes and workings of said Twenty-One Mining Company and followed said vein on its downward course to the lower or main tunnel of the said Twenty-One Mining Company, and along said tunnel for a distance of about one hundred and fifty feet; and that he was not permitted to follow said vein further in said tunnel, but was prevented from so doing by officers of the said Twenty-One Mining Company. But affiant believes that said Twenty-One tunnel follows said Sixteen to [16] One vein continuously from said point of entrance from the Sixteen to One shaft to the face of said tunnel.

And affiant further declares that said workings, tunnel, drifts, and stopes, made by the Twenty-One Mining Company are upon said Sixteen to One vein between vertical planes passed through the end lines of the Sixteen to One lode mining claim, and ex-

tended in their own direction and are between a plane so passed through the southerly end line and a parallel plane seven hundred feet northerly thereof.

And affiant expressly declares that no portion of the vein exposed in the workings of the Twenty-One Mining Company underneath the Ophir, Eclipse Extension and Valentine claims, has its apex within any of said claims or within the Twenty-One lode mining claim, but that said vein has its apex in the Sixteen to One mining claim.

And affiant further declares that the ore occurring in said Sixteen to One vein is very rich ore containing gold in large quantities and that the valuable nature of said Sixteen to One vein is due to the occurrence of small chimneys or shoots of very rich ore, and that said vein is characteristically barren or low grade between such shoots. And affiant declares that it is possible to extract large quantities of gold from small areas of said vein and that it is impossible to determine the value of gold so extracted from the size or appearance of the stope from which the ore was extracted or from the assay value of the vein exposed at the edges of such stope.

And affiant believes that if the Twenty-One Mining Company be permitted to continue to work said Sixteen to One vein between the vertical end-line planes produced of [17] the said Sixteen to One lode mining claim, and to extract ore therefrom and to convert the proceeds of said ore to its own use, that said trespass upon said Sixteen to One vein will work an immediate and irreparable injury to the owners of the said Sixteen to One quartz lode claim.

IN WITNESS WHEREOF, affiant sets his hand.

(Signed) FRED SEARLES, Jr.

Subscribed and sworn to before me this 2d day of August, 1916.

[Seal] (Signed) EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

(Here follows map.)

[Endorsed]: Filed Aug. 2, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [18]

[Title of Court and Cause.]

Application for Restraining Order and Order of Inspection.

State of California,
City and County of San Francisco,—ss.

S. B. Connor, being first duly sworn, deposes and says: That he is the vice-president of plaintiff in the above-entitled action and has taken a leading part in the management and operation of the Sixteen to One Mine, in behalf of the said plaintiff, and that he makes a part hereof the Bill of Complaint filed herein for all the matters and particulars therein set forth. That he has had a wide mining experience for over forty years last past, in the States of California and Nevada, and also in Mexico and South Africa, and has been engaged in developing and exploiting mines and connected with mining operations during said period of time.

That for approximately three years last past, he has been one of the directors of the plaintiff com-

pany and for a portion of said time has been president and more recently [19] has been and is vice-president of said plaintiff company, and has taken a leading part in the development and operation of said Sixteen to One Mine.

That this affiant has just returned from the properties in question and has kept in close touch with the progress of the work of the plaintiff in sinking its incline shaft and extending levels therefrom and with the formation disclosed therein. That about a month ago, this affiant has inspected the workings of the defendant under arrangement with the representative of said defendant.

That the above-named plaintiff is the owner of the Sixteen to One lode location and the above-named defendant claims to be the owner of the adjoining Belmont and Valentine lode mining claims situated northeasterly of and adjoining said Sixteen to One claim, the relative positions of said claims being shown on the plat attached hereto and marked Diagram One. That crossing the southeasterly end line of the Sixteen to One claim and about three hundred feet from the southwest corner of said claim is the apex of the main Sixteen to One discovery vein. Said apex of said vein extends northwesterly within the boundaries of said Sixteen to One claim for a distance of over eight hundred feet, said apex of said Sixteen to One vein being established by actual exposure on the surface to a point where it passes underneath the lava capping situated on said claim, and also by drain tunnel which extends northwesterly from the southerly end line of said claim for

a distance of approximately seven hundred and fifty feet. That said vein can be traced throughout the entire length of said drain tunnel [20] to its face, and that at its face said vein is only a comparatively short distance below the original surface, and is very close to the northeasterly side boundary of said Sixteen to One claim, so that in following up to the original surface under the lava capping on the dip of said vein, it is a certainty that said apex exists within the vertical boundaries of said Sixteen to One claim approximately eight hundred feet northwesterly from the southerly end line thereof. That said vein dips in a northeasterly direction from said apex and can be followed down from said apex through continuous workings in an incline shaft which has been sunk on said vein for a distance of approximately seven hundred and fifty feet, and that said vein is either encountered in said shaft or is in close proximity to the same for the entire distance to the bottom of said incline shaft, and that on the 25th day of July, 1916, said bottom of said shaft was connected with an upraise made by defendant which followed said vein up from their main tunnel so that the identity and continuity of the said Sixteen to One vein from its apex in the Sixteen to One claim down to and connecting with the workings of the defendant situated vertically beneath the adjoining Belmont and Valentine mining claims has been demonstrated. That said defendant has extended its workings northeasterly from said point where said intersection of workings of defendant and plaintiff has been made and said Sixteen to One vein can be

traced continuously along said workings in a northeasterly direction and also in a southwesterly direction from said point and said defendant [21] is now engaged in extracting ore from said vein which affiant has every reason to believe is high grade in character and that said ore is now being stoped and removed from said Sixteen to One vein between a vertical plane passed through the southerly end line of the Sixteen to One claim and another plane parallel thereto situated seven hundred and fifty or eight hundred feet northwesterly therefrom at the furtherest present known exposure of the Sixteen to One vein in the said Sixteen to One claim. Said vertical planes being extended indefinitely northeasterly in the direction of the dip of said Sixteen to One vein.

That the ore in said vein occurs in rich shoots of comparatively limited extent, so that a large amount of value, amounting to thousands of dollars can be extracted within a very short period of time, and that affiant fully believes that defendant is engaged in extracting ore from one of these shoots at the present time and that if allowed to continue a great portion of the value of the Sixteen to One vein as it extends extralaterally beneath the adjoining locations claimed by defendant will be removed.

That unless restrained, defendant threatens to and will continue and is actually engaged in mining and extracting valuable ore from said extralateral segment of said Sixteen to One vein and will remove all the substance and value from said ground to the great and irreparable injury of this plaintiff.

That affiant is credibly informed that there [22] is a large judgment, amounting to upwards of thirty thousand ($30,000) dollars, outstanding against said defendant, and that if defendant is allowed to continue to extract said ore and appropriate the proceeds to its own use that plaintiff will be unable to recover any of the value of said ore from said defendant.

That in order to make proper preparations for the trial of this cause, it is necessary that plaintiff, through its attorneys, surveyors and other representatives, be allowed at reasonable times to enter the mine workings and property of the defendant for the purpose of inspecting the same, and surveying, photographing and sampling and otherwise examining said workings and the formation there disclosed.

WHEREFORE, this affiant, in behalf of the plaintiff, prays that a temporary restraining order issue out of this Honorable Court to be directed to the defendant Twenty-one Mining Company and restraining it and its servants, agents and employees, and all persons claiming under or connected with said defendant from further working or mining, or extracting ore from any portion of the said vein lying between said vertical planes above described and that said order further direct said defendant, and its servants, agents and employees, and all persons claiming under it, to permit said plaintiff, through its representatives, to enter the premises and mine workings controlled by defendant for the purpose of inspecting, surveying, photographing, sampling and examining the same at reasonable

times, and plaintiff further [23] prays that after due notice that a hearing be had for the purpose of continuing said restraining order *pendente lite* by a writ of injunction, and plaintiff prays for such further relief as to this Court may seem meet and equitable.

(Signed) S. B. CONNOR,
As Vice-president of and in Behalf of the Plaintiff.

Subscribed and sworn to before me this 2d day of August, 1916.

[Seal] (Signed) EUGENE W. LEVY,
Notary Public in and for the City and County of San Francisco, State of California.

WM. E. COLBY, (Signed)
GRANT H. SMITH, "
Attorneys for Plaintiff.

(Here follows map.)

[Endorsed]: Filed Aug. 2, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [24]

[Title of Court and Cause.]

Affidavit of George O. Scarfe.

State of California,
County of Sierra,—ss.

George O. Scarfe, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Alleghany, Sierra County, California.

That he is a mining engineer by profession and has practiced said profession for a period of six years, the major portion of which time has been spent in

and about the Alleghany Mining District, Sierra County, California.

That in the course of said practice he has become familiar with all of the operating mines in said Alleghany Mining District and has made surveys and examinations of many of said mines.

That he is and for several years last past has been familiar with the mine known as the Sixteen to One Quartz Mine and with the adjacent and surrounding mining claims and with the Twenty-one Quartz Lode Mining Claim.

That on the 20th day of June, 1916, he was engaged by the original Sixteen to One Mine, Inc., to make surveys of the workings of the Sixteen to One Mine and of the boundaries [25] of the Sixteen to One quartz mining claim, and to co-ordinate said surveys and depict the said surveys upon a map or plat for the purpose of showing the position of said workings of the Sixteen to One Mine with relation to the boundary lines of the said Sixteen to One Quartz lode mining claim, and with relation to the workings of the said Twenty-one Mine.

And affiant further declares that he has completed said surveys and has depicted the same upon a map marked Exhibit "A" and which is hereby incorporated in this affidavit and made a part thereof. And that all of the workings depicted upon said map are so depicted as the result of his surveys except those certain workings colored in yellow which working is the Twenty-one lower tunnel.

And said affiant further declares that the said surveys of the said Sixteen to One quartz lode min-

ing claim and of the workings of the said Sixteen to One Mine are correct surveys and that the said map Exhibit "A" correctly represents the relation of said workings to the boundary lines of said quartz lode mining claim, except that said working colored in yellow was not surveyed by said affiant but was surveyed by the surveyor of the Twenty-one Mining Company and was placed on said map Exhibit "A" as a true and correct copy of the map furnished by the said surveyor of the said Twenty-one Mining Company.

And affiant further declares that he has not been permitted to survey the said working known as the Twenty-one lower tunnel, but has at all times been denied entrance to said working, but that he has surveyed the position of the mouth of the Twenty-one tunnel and has gained entrance from the Sixteen to One shaft to a portion of the tunnel which lies under the surface of the [26] Valentine quartz lode mining claim.

And affiant states that to the best of his knowledge, based on said survey of the mouth of said tunnel and upon said entrance from said Sixteen to One shaft, the position of said Twenty-one tunnel is correctly shown on said map Exhibit "A" incorporated in this affidavit.

And affiant further declares that he has depicted upon the said map Exhibit "A" the boundaries of the Ophir, the Eclipse and the Eclipse Extension quartz lode mining claims in accordance with the official surveys for patent of said claims and has depicted upon said map Exhibit "A" the boundaries

of the Twenty-one Mining Claim, the Eagle Mining Claim, the Belmont Mining Claim, and other adjoining claims from the map of the surveyor of the Twenty-one Mining Co., and affiant believes that the boundaries of said Twenty-one Mining Claim, Eagle Mining Claim, Belmont Mining Claim and other adjoining claims are correctly depicted upon said map Exhibit "A" but affiant has not surveyed said mining claims.

And affiant further declares that the vein exposed in the said Twenty-one tunnel and upon which stopes have been constructed and within the limits of the Valentine Eclipse Extension and Ophir quartz lode mining claims is the same vein as that exposed in the shaft of the Sixteen to One Mining Co., and in the levels and stopes from said shaft constructed by said Sixteen to One Mine Incorporated and by their predecessors in interest under the surface of the said Sixteen to One, Belmont, Ophir and Valentine quartz lode mining claims.

And affiant further declares that it is possible to follow and that he has followed the said Sixteen to One vein from the workings of the said Twenty-one Mining Company underneath [27] the Valentine claim into the shaft of the Original Sixteen to One Mine Inc.

And that said Sixteen to One vein on its upward course lies immediately above the Sixteen to One shaft from the bottom of said shaft to the 400 level of said shaft and that entrance to said vein from said shaft is gained by three short raises in said interval below said 400 foot level. And affiant further de-

clares that said Sixteen to One vein is exposed in said shaft continuously on its upward course from said 400-foot level up to the 250-foot level of said Sixteen to One shaft. And that a short distance above the 250-foot level the said Sixteen to One vein is interrupted in its upward course by a fault which displaces the said vein for a distance of about fifty feet. That on the 150-foot level of the said Sixteen to One Mine the said Sixteen to One vein is encountered on the westerly side of the said fault and said vein is followed continuously in said workings of the Sixteen to One Mine up to the upper working tunnel of the said mine. And affiant further declares that said upper tunnel of said Sixteen to One Mine follows said Sixteen to One vein from its mouth to its face and that the top or apex of said vein crosses the southerly end line of the Sixteen to One quartz lode mining claim at the mouth of the said upper tunnel, being 60 feet westerly from Cor. No. 1 of said claim along said southerly end line.

And affiant is able to state and does state that the vein exposed at its outcrop or apex at the mouth of the upper tunnel of the Sixteen to One Mine is the same vein as that exposed in the said Twenty-one tunnel within the limits of said Valentine, Eclipse Extension and Ophir mining claims and that no [28] portion of the Apex of said vein lies within the limits of said Valentine, Belmont, Eclipse Extension or Ophir claims but lies to the west thereof in the said Sixteen to One quartz lode mining claim.

And said affiant further declares that the apex of the said Sixteen to One vein is traceable northerly

from said southerly end line of the Sixteen to One claim for a distance of about one hundred feet outcropping at the surface. And that beyond said point about one hundred feet from said end line, said outcrop is not visible but is buried by the surface wash and by an accumulation of lava and gravel.

And affiant further declares that said Sixteen to One vein is exposed at intervals in the lower tunnel of the Sixteen to One Mine and is exposed in the face of said tunnel at a point about 700 feet northerly from the said Sixteen to One end line. And that the dip of the said vein in the face of the Sixteen to One tunnel is such that, if projected to the surface of the bedrock it would outcrop within the boundaries of the said Sixteen to One quartz lode mining claim. and affiant therefore believes that the said Sixteen to One vein has its top or apex within the boundaries of the Sixteen to One claim continuously from the southerly side line of said claim to a point 700 feet northerly of said southerly side line and for a greater distance.

And affiant further declares that the workings and stopes of the said Twenty-one Mining Co., on the said Sixteen to One vein under the surface of the Valentine, Ophir and Eclipse Extension claims lie between vertical planes passed through the end lines of the said Sixteen to One quartz lode mining claim and extended in their own direction, and that the said [29] Twenty-one Mining Company is now working said Sixteen to One vein between said vertical end-line planes extended of the Sixteen to One mining claim and is extracting valuable ore from said veins between said planes.

And affiant further declares that in the course of the practice of his profession in said Alleghany Mining District he has become somewhat acquainted with the vein known as the Twenty-one vein which outcrops at the surface of the said Belmont quartz lode mining claim and has examined said vein at its outcrop and that to the best of his knowledge and belief said vein is not a valuable vein but is a barren vein or contains too little gold or other precious minerals to be profitably worked and mined. And affiant further states that the workings and stopes of the Twenty-one Mining Company under the surface of said Valentine, Eclipse Extension and Ophir claims are not on the said Twenty-one vein but are upon the Sixteen to One vein apexing in the said Sixteen to One Quartz lode mining claim.

And affiant further declares that to the best of his knowledge and belief the workings of the Twenty-one Mining Co. do not expose commercial ore on the Twenty-one vein or on any vein save only on the Sixteen to One vein within the vertical end-line planes of the Sixteen to One quartz lode mining claim.

And affiant further declares that the valuable ore occurring in the said Sixteen to One vein in the workings of the said Twenty-one Mining Co. underneath the said Valentine, Eclipse Extension and Ophir mining claim is of the kind known as "high grade" ore in which large quantities of gold occur in a small volume or tonnage of said ore. And that the vein between such occurrences of high-grade ore does not consist of valuable ore [30] but of quartz or vein matter containing little or no gold or

precious mineral. And affiant further declares that it is impossible because of the nature of the occurrence of said ore to determine the value of the ore that has been removed from a stope by sampling the edges of the stope or to determine the value in any other manner except only by milling the ore removed.

And affiant therefore declares that if the said Twenty-one Mining Co. is permitted to continue to work said Sixteen to One vein between said vertical end-line planes of said Sixteen to One quartz lode mining claim and to continue to extract valuable ore from said vein and to mill said ore and convert the proceeds of said ore to its own use that said Twenty-one Mining Co. will work immediate and irreparable injury to said original Sixteen to One Mining Co. in as much as it will be impossible to estimate the value of said high-grade ore removed from said Sixteen to One vein between said vertical end planes extended of said Sixteen to One quartz lode mining claim.

GEORGE O. SCARFE.

Subscribed and sworn to before me this 29th day of July, 1916.

[Seal] E. L. CRAFTS,

Notary Public in and for the County of Sierra, State of California.

[Endorsed]: Filed Aug. 2, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [31]

[Title of Court and Cause.]

Answer to Bill of Complaint.

For answer to the Bill of Complaint herein on the equity side of this court, said defendant denies and alleges as follows:

1. Defendant states that it has no information or belief upon the subject sufficient to enable it to answer the same, and placing its denial on that ground it denies that for more than five years last past, or for any other time, or at all, the plaintiff or its predecessors in title, or any of them, have been, or that the plaintiff is now, the owner of, or in the possession of, or entitled to the sole, or immediate, or exclusive, possession of, the said Sixteen to One quartz mine or lode ming location, or of any part thereof, or of all or any part of the mineral, ore, or ore-bearing rock, or metal, existing or found to exist in said mining claim, or that the same is described as set forth in subdivision III of said Bill.

2. That it has no information or belief upon the subject sufficient to enable it to answer the same, and placing its denial on that ground, it denies that there exists within [32] said Sixteen to One lode mining claim any lode or vein of rock in place carrying gold, or any other valuable metal or mineral, or that any lode or vein existing within the boundaries of said Sixteen to One lode mining claim on its course or strike traverses the said Sixteen to One lode mining claim from end to end, or crosses both the northerly or southerly end line thereof, or any end line thereof, or any of the lines thereof, or that the top

or apex of any lode or vein situated within the boundaries of said Sixteen to One lode mining claim is wholly or at all included within the said lines of the said claim, or within any lines thereof.

3. On the same ground it denies that for more than five years last past, or for any other time, or at all, the plaintiff or its predecessors in interest have been, or that it is now, the owner of, or in the possession of, or entitled to the sole or exclusive possession of, any vein through its entire or any depth between planes drawn vertically downward through the northerly or the southerly end line of said Sixteen to One lode mining claim, or through any of its lines, or extended indefinitely or at all in the direction of any dip of any vein; and it positively denies that defendant has interfered with or made any unlawful entry upon any segment of any vein within the lines of said Sixteen to One mining claim, or of any extension thereof.

4. It denies that any vein described in said complaint as the Sixteen to One vein, or any vein, having its apex within the boundaries of said Sixteen to One Mine, on its downward course or otherwise, departs from the perpendicular or passes through the easterly side line of said Sixteen to One claim, or into or beneath the surface of the said Belmont, or Valentine, or Tightner Extension lode mining claims of this defendant, or any **[33]** part of any thereof, or beneath the said Twenty-One quartz claim owned by this defendant, or beneath any other adjoining mining claims, or that within any lode or vein apexing within said Sixteen to One claim there

has existed at any time mentioned in said complaint or now exists any ore or rock in place bearing gold, or any other valuable minerals, or metals, which ever were or are owned or possessed by plaintiff, or to which plaintiff had or has the sole or exclusive right, or any right, to search for, or to extract or remove; or that defendant ever entered upon any such vein or ore, or that plaintiff was ever in the sole or exclusive possession of any vein or ore beneath the surface of the said Belmont, Valentine, Tightner Extension and Twenty-One claims, or any of them; or that plaintiff was ever in possession of or had the right to the sole or exclusive right, or any right, to search for or extract or remove any ore or rock in place bearing gold, or any valuable metals beneath any of said claims last mentioned.

5. It denies that defendant claims or asserts, or ever claimed or asserted, adversely or in hostility to the plaintiff, or otherwise, any estate, or right, or title, or interest in or to any segment of any Sixteen to One vein, or lode, or to any vein or lode existing, or having its apex, within the boundaries of said Sixteen to One claim; or that in pursuance of any adverse claim or at all, said defendant is now or ever has been wilfully or unlawfully or at all entering upon any part of any extralateral segment of any vein having its apex within the boundaries of said Sixteen to One quartz claim; or that it ever has or now is wilfully or unlawfully, or at all, trespassing upon any segment of any vein having its apex within said Sixteen to One mining claim; and

it denies that it has ever mined, or is now mining, or has [34] ever extracted, or is now extracting, or has ever converted, or is now converting, to its own use, any valuable or other ore from any such vein.

6. It denies that any claim it has made to any ores or to any portion of any vein described in said bill is without any right whatever, or that by means of its mine working it has ever extracted or removed from any segment of any vein any of the property, or gold, or gold-bearing ores, or metals, of great value, or anything the property of plaintiff, of the value of one hundred thousand (100,000) dollars, or of any other sum of money whatever, or that it has ever removed any thing of value in which the said plaintiff had any property right; or that it has ever damaged the said plaintiff in the sum of one hundred thousand (100,000) dollars, or any other sum of money whatever.

7. It denies that it has ever trespassed or committed any act alleged or referred to in said bill wilfully or at all, or that it ever had any knowledge that any ores extracted from its said property or from any property as referred to in said bill, or at all, were not its own property; but on the contrary it has always believed and now believes that all of the ores and rock in place of any kind, and values of any kind, extracted by it from the workings situated in its said mines was its own property and not the property of any other person; and it denies that it ever has been engaged in or is still engaged in wilfully, or wrongfully, or at all, extracting or

removing gold or gold-bearing ores or metals the property of the said plaintiff from any segment of any vein having its apex within the boundaries of the said Sixteen to One Mine, or that it wrongfully, or wilfully, or otherwise, or at all, continues in possession of any portion of any vein apexing within the boundaries of said Sixteen to One [35] claim.

8. It denies that defendant is now or ever has been mining or extracting any rich or valuable or any ore from any vein described in said bill, or any dip of any vein, or otherwise, or within any extra-lateral segment of any vein belonging to said plaintiff, or at all, as set forth in said complaint, or at all, or that any portion of any mining or extracting of ore by defendant has extended beyond the vertical boundaries of any mining claim to which defendant claims ownership, as herein alleged, or at all, or underneath the surface of any adjoining territory, or beneath the surface of the Eclipse Extension lode, except on a vein apexing within the boundaries of the Twenty-one Mine.

9. It denies that this defendant ever has or intends to, or unless restrained by this Court, will further, or at all, intrude or trespass upon said segment of said vein alleged in said bill, or any segment of any vein the property of plaintiff, or that it intends to or will make further or any mine workings or excavations for the purpose of mining said or any ground, or at all, or extracting or removing from any ground any mineral, or ore, or ore-bearing rock, or metals therein, or at all, or that it intends to or will continue to dig up, or extract, or

remove, from said or any ground the property of said plaintiff, or to convert to its own use, or at all, any mineral, or ore, or ore-bearing rock, or metal, therein, or in any ground or vein the property of plaintiff, or at all, or will take from said or any property of plaintiff the entire or any value thereof, to the great, or irreparable, or any injury of plaintiff.

10. It denies that unless it, or its agents, or servants, or employees, or any of them, are restrained or enjoined from intruding or trespassing upon any vein or ore the property of plaintiff, or from making any cuts, or openings, or excavations, [36] thereon, or from digging up, or extracting, or removing, or carrying away, from any property of plaintiff, or any vein or plaintiff, or any segment of any vein of plaintiff, any material, or ore, or ore-bearing rock, or metals, in any property of plaintiff contained, or that the value or substance of any property of plaintiff will be destroyed, or that plaintiff will suffer any irreparable or any injury.

11. It denies that said or any mineral, or ore, or ore-bearing rock, or metals, in said or any vein, or mine, of plaintiff, as described in said bill, constitutes the sole or any value of any property of plaintiff, as described in said Bill or at all.

12. It denies that on the 2d day of August, 1916, or at any other time, plaintiff commenced an action at law against the defendant herein in this court to recover of or from this defendant, the possession of any property, other than an action to recover the sum of one hundred thousand (100,000) dollars,

as damages for certain alleged injuries stated in said complaint, which is hereby referred to.

13. It denies that plaintiff is at all remediless in the premises at or according to the strict rules of the common law, or at all, or can have relief only in a court of equity.

14. It denies that it is necessary to restrain it from doing any acts alleged in said Bill, and denies that it has ever trespassed or committed waste upon any property of plaintiff.

Further answering said Bill, defendant alleges:

15. That ever since the year 1909, defendant has been and now is the owner of those certain quartz or lode mining [37] locations situated in the Alleghany Mining District, in the County of Sierra, State of California, and known as the Twenty-one Mine, and consisting of the Twenty-one quartz claim, the Tightner Extension quartz claim, the Belmont quartz claim, and the Valentine quartz claim, and of all the mineral, ore, ore-bearing rock and metal existing and found to exist in said claims by virtue of a due compliance with the laws of the United States and of the State of California pertaining to location, ownership and possession of mining claims, each of said claims having been properly and duly located under the laws of the United States and of this State by the predecessors of defendant, and all prior to said year 1909, the said Belmont, Valentine and Tightner Extension quartz lode claims being the same claims mentioned in the bill of plaintiff herein.

16. That in the year 1909, said defendant ac-

quired the said quartz claims from its predecessors by purchase at a cost of more than thirty-six thousand five hundred (36,500) dollars.

17. That the said claims are all situated upon the same lode and are in one body, and upon the purchase thereof by defendant in the year 1909, the said defendant consolidated all of said claims, and ever since said time the said claims have been worked and used together as one mining claim, and have been called and known as the "Twenty-one Mine."

18. That the south end of said Twenty-one quartz claim commences south of Kanaka Creek, and crossing Kanaka Creek runs northerly toward the center of the ridge dividing Kanaka and Oregon Creeks, and is a full claim of 1500 feet in length.

19. That the said Tightner Extension quartz claim adjoins said Twenty-one on the north, and said Belmont claim adjoins said Tightner on the north, said Valentine claim adjoining [38] said Belmont on the easterly side thereof.

20. That commencing at the south end line of said Twenty-one claim is a vein or lode of quartz rock in place containing gold and other valuable mineral, which said vein, as indicated on the surface by its outcrop, crosses said Kanaka Creek, and runs thence northerly the entire length of said Twenty-one claim, thence out of the north end line thereof and on to and into said Tightner Extension claim, crossing the south and north end lines thereof, and thence on to and into the Belmont claim, and crossing the south and north end lines thereof, the apex of said vein existing and being traceable the entire length

of said claims, except a short distance on the northerly end of said Belmont claim, where the same is covered by a superficial natural deposit of gravel and lava existing at said point, which said vein is known as the easterly or Tightner vein.

21. That there also exists within the boundaries of said Twenty-one claim another vein situated more than one hundred and thirty (130) feet west of said easterly or Tightner vein, and commencing at the southerly end line of said Twenty-one claim, and running thence northerly and through the entire length of said Twenty-one claim out of the northerly end line thereof at a point under the northwest corner thereof, and from thence on to and into the said Sixteen to One claim mentioned in said complaint, and has always been known and designated as the westerly or Sixteen to One vein, and as defendant is informed and believes the part thereof above the north end line of said Twenty-one claim is the same vein claimed by plaintiff as the sole vein existing within the boundaries of said Sixteen to One claim.

22. That it was on account of the presence of said veins and the mineral existing therein that caused the predecessors [39] of defendant to locate the said Twenty-one quartz claim, which said Twenty-one quartz claim was located and the development thereof commenced long prior to the location of and discovery of any vein upon the said Sixteen to One claim.

23. That at the time of the purchase of the said Twenty-one Mine of this defendant, the predeces-

sors of defendant in the development of said Twenty-one Mine had commenced a tunnel at about ten feet above the level of said Kanaka Creek and had run the same in following the said westerly or sixteen to One vein a length of about four hundred (400) feet.

24. That upon the said purchase of said Twenty-one Mine by defendant, defendant continued the said tunnel and on said vein to a distance of about five hundred and four (504) feet from the portal thereof, and at said point turned the said tunnel nearly at right angles and to the east, and ran a cross-cut a distance of about one hundred and sixty (160) feet, all through the country rock, at which point it cut a separate and distinct vein from said westerly or Sixteen to One vein, and being the said easterly or Tightner vein, and continued said tunnel on the said easterly or Tightner vein a total distance from the portal of said tunnel to nearly two thousand (2000) feet, crossing the said Twenty-one quartz claim, Tightner Extension and Belmont claims, under and into said Valentine claim, the entire tunnel on said easterly or Tightner vein being run on the said vein without a break in the vein and between distinct and well-defined walls. That said tunnel was run on said easterly or Tightner vein, and on the vein which has its apex and outcrop within the boundaries of said Twenty-one, Tightner Extension and Belmont quartz claims, and is the same vein which apexes and crosses the said Twenty-one, Tightner Extension and Belmont quartz claims

from the south end **[40]** line to the north end line of each of them, and hereinbefore described as said easterly or Tightner vein, and was and is no part of any vein apexing or outcropping within the boundaries of said Sixteen to One vein.

25. That said work of defendant was performed up to about the month of September, 1915, and during said time from 1909 up to said time in 1915 said defendant had made a number of upraises from said tunnel, none to exceed one hundred (100) feet in length, and all on said east vein, and none indicating the presence of any other vein in said vicinity; and had at various times extracted small quantities of ore for prospecting purposes and in opening up the said vein, but in all cases the cost of extraction and reduction and the proper development work applicable thereto largely exceeded the value of the output thereof.

26. That all of said work and development on said easterly or Tightner vein by defendant was done with the utmost good faith and under a belief, which defendant still has, that the same was done on the vein heretofore alleged as outcropping and apexing within the lines of said Twenty-one, Tightner Extension and Belmont quartz claims, and that all of said work and running of said tunnel and the extraction and reduction of said ores was done with the full knowledge of the plaintiff and its predecessors, and said defendant has not damaged the said plaintiff in any sum of money or at all by said work, extraction and reduction of ores, and no part of the said work was done upon any vein apexing within

the boundaries of said Sixteen to One Mine, and none of said ores so extracted or reduced were the property of plaintiff at all.

27. That since the 6th day of October, one thousand [41] nine hundred and fifteen (1915), the date of a contract of sale made by this defendant to J. H. Hunt, this defendant has not had possession of and has not worked or mined the said Twenty-one Mine or reduced any of the ores therefrom at all, and that during the life of said contract, which runs until the 6th day of October, one thousand nine hundred and twenty (1920), this defendant does not intend to work said Twenty-one Mine or extract any of the ores therefrom.

WHEREFORE, defendant prays that plaintiff take nothing herein, and that it have its costs; also that defendant have such other and further relief as to this Court may seem equitable.

W. H. METSON,
FRANK R. WEHE,
Attorneys for Defendant. [42]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

L. A. Maison, being first duly sworn, deposes and says:

I am an officer of the corporation, Twenty-one Mining Company, defendant named in the foregoing Answer to Bill of Complaint, to wit, secretary thereof, and I make this affidavit in behalf of said defendant.

I have read the foregoing Answer to Bill of Complaint and know the contents thereof; the same is true of my own knowledge, except as to such matters and things as are therein stated upon information or belief, and as to such matters I believe it to be true.

L. A. MAISON.

Subscribed and sworn to before me this 11th day of August, 1916.

[Seal] D. B. RICHARDS,

Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within Answer to Bill of Complaint is hereby admitted this 11th day of August, one thousand nine hundred and sixteen (1916).

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.

[Endorsed]: Filed August 11, 1916. Walter B. Maling, Clerk. **[43]**

[Title of Court and Cause.]

Affidavit of J. H. Hunt, Filed August 11, 1916.

State of California,
City and County of San Francisco,—ss.

J. H. Hunt, being duly sworn, deposes and says that he is familiar with the workings of the Twenty-one Mine, which mine is in litigation in the above-entitled suit.

That the said mine is under bond to one J. H. Hunt, that is to say, that the said Hunt has a written lease, option and contract in writing from the Twenty-one Mining Company, a corporation, whereby the said Hunt is privileged to buy the said property for the sum of $250,000 at any time within five years from October 6, 1915, one-half of which $250,000 is required by said written bond to be paid by the said Hunt to the said Twenty-one Mining Company within three years from said October 6th, 1915;

That the said Hunt has already paid said corporation the sum of $30,000 on said lease, bond and contract, and that the said Hunt has been in the exclusive possession and operating said property exclusively since on or about the 15th day [44] of October, 1915, under and by virtue of said lease, bond and written contract.

At the date of said writing there was a mill on said property of the capacity of 15 tons per day; that since entering into the possession of said property the said Hunt has rebuilt the said mill and has also built another mill of 35 tons capacity per day and that the total capacity of said mills is 50 tons per day, and that the amount of money invested therein is $25,000; that the ore in the stopes upon which work has been enjoined averages about $50 a ton and that the output of said 50-ton mill would be about $2500 per day or about 900,000 per annum and that there is no other ore in said property open which can be stoped and milled.

That there is about 2,000 feet of tunnel leading to

the stopes under injunction herein in which a car track has been laid and which tunnel is more or less timbered; that a contract exists with the Middle Yuba Hydro-Electric Power Company under and by virtue of which contract the said lessee Hunt is obliged to pay to said corporation the sum of $125 per month minimum for electric power for use in said mill whether the said mills are run or not. That said Hunt has been obliged to select special men because some of said ore is what is known as high-grade or picture rock and it is unsafe to allow anyone to work in stopes carrying ores of that character unless they be very reliable, honest and upright miners. That the organization that said Hunt has for this purpose at this time will have to be maintained at a cost of about $1,000 a month and he cannot afford to have this organization disrupted without a loss of said amount. That the depreciation on said mill property is at least $5,000 a year and upon the track and work in said tunnel at least $150 a month; that the going rate of interest in said Sierra County is 7 per cent per year. [45]

That the defendant and his lessee are faced with the contingency that the time within which the said option must be paid out by the said Hunt is running and the money that would be taken from said mine by said Hunt with which to pay the same cannot be forthcoming if an injunction be issued; that the interest on said $900,000 prorated for six months of a year is $31,500 per year. That the depreciation on said mill and workings per year is $6800. That the interest on the capital invested in said mills is $1750

a year, and the interest on the capital invested in said car track, timber and excavations is $1800 a year, or a total of $53,850. That facing a loss of $53,850 per year besides a loss of time and the running of time on the bond herein, an undertaking or indemnity of at least $200,000 should be exacted from the complainant in order to protect affiant should an injunction be granted, so that the parties to said lease and option, who will be injured by said injunction, may be protected adequately against the wrong and injury done by the aggressions of this plaintiff.

J. H. HUNT,

Subscribed and sworn to before me, this 10th day of August, 1916.

FLORA HALL, (Seal)

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed August 11, 1916. Walter B. Maling, Clerk. [46]

[Title of Court and Cause.]

Affidavit of J. H. Hunt, Filed August 14, 1916.

State of California,

City and County of San Francisco,—ss.

J. H. Hunt, being first duly sworn, says:

That he has held and has been in possession of the so-called Twenty-one Mine, situated at Alleghany, Sierra County, California, and has been working the same ever since the 15th day of October, one thousand nine hundred and fifteen (1915), under a con-

tract of sale executed by the said defendant.

That as the vendee in said contract he has been present at the said mine and has actually taken part in the management thereof during the greater portion of the time since said October 15th, 1915, and is familiar with all of the workings in said Twenty-one Mine, as exhibited on the map Exhibit "A" attached to the affidavit of Mr. Edward C. Uren.

That he was present at the said mine a part of the time covered by the examination made by the engineers of plaintiff of a part of said mine and of the Sixteen to One Mine. [47]

Referring to the affidavits of said engineers herein to the effect that they were not permitted to examine the Twenty-one tunnel and were preventd from so doing by the officers of said Twenty-one Mining Company, affiant says:

That within six weeks before the commencement of this action it had been understood between the said plaintiff and this affiant, as the said vendee in said contract and as being the party in possession thereof, that joint surveys of said properties should be made by Edward C. Uren, the engineer of affiant, and said George O. Scarfe, and that all matters should remain in the condition in which they were during said period and until the maps of the said two surveyors were exchanged and the facts represented by said maps understood by each of the said parties.

That on the day said understanding was had and just prior thereto, and on the invitation of this affiant, S. B. Connors, the vice-president of plaintiff

and who verifies the application herein for the restraining order, and the mining superintendent of the plaintiff, one —— Sullivan, were conducted into and through all of the workings of said Twenty-one Mine, and in company with this affiant and his superintendent and foreman, went into the said Twenty-one Mine tunnel from its said portal to its face, and no part thereof was concealed from the said Connors and Sullivan, and the purpose of said visit was to permit the said Connors and said Sullivan to satisfy themselves as to any facts exhibited in the said tunnel, and immediately thereafter all of said parties repaired to the office of said Sixteen to One Mine and consummated the above understanding.

That pending the said understanding and before the [48] same had expired, said Fred Searls, Jr. insisted upon examining said property and requested permission to enter the same, but that affiant as the then exclusive owner of the rights of possession of said property, and having in mind the said understanding, refused to permit permission at said time, but consented to said inspection as soon as the maps of said engineers were exchanged according to said understanding, whereupon and against the consent of affiant, the said Fred Searls, Jr., or someone under his instructions, broke into affiant's said working in said Twenty-one Mine tunnel at about the point near the top of the upraise connecting the Sixteen to One shaft and affiant's workings in said Twenty-one Mine upraise, and thereafter surreptitiously and forcibly, and without affiant's consent, entered in and upon the said workings of affiant.

Affiant further says that it appears from all the maps and plats of said shaft and workings that said plaintiff has, without the consent and often without the knowledge of affiant or said defendant, trespassed underground and beyond the sight of affiant and defendant upon the said Common Law rights of defendant and this affiant as follows:

That without the consent or knowledge of defendant or affiant, it ran a cross-cut, running Easterly from or near the end of Sixteen to One Tunnel No. 2, at Station 18, which was excavated more than two hundred (200) feet across and into the said Belmont quartz claim of defendant, which fact affiant nor said defendant did not learn until the 21st day of June, 1916, the cross-cut evidently having been run to reach the east or Tightner vein apexing within the boundaries of said Belmont claim, but which cross-cut was not run a sufficient distance to reach the same. **[49]**

That also, as appears from the said map Exhibit "B" attached to said affidavit of said Edward C. Uren, and also from said plat Exhibit "B" attached to said affidavit of Fred Searls, Jr., a large portion of the said so-called Sixteen to One shaft is run in country rock and not following any vein at all, and particularly is this so below the four hundred (400) foot level within the boundaries of the Valentine ground, the property of defendant, and a portion of the way on the Belmont ground and on the Tightner Extension ground, and at the present time said plaintiff is working through the said shaft and is extracting ore at a point below the four hundred

(400) foot level and is conveying the same through the said shaft to the surface of the ground and passing in said shaft under the surface lines of said Tightner extension, and being through portions of said shaft which do not follow any vein at all.

That affiant has been informed by his superintendent over the telephone this morning that plaintiff has again commenced the sinking of said shaft in the country rock and away from said vein and under the surface lines of said Valentine quartz claim and from the bottom of the so-called Sixteen to One shaft as the same is delineated on the said Fred Searls, Jr. map Exhibit "B."

J. H. HUNT.

Subscribed and sworn to before me this 14th day of August, 1916.

[Seal] RITA JOHNSON,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed August 14, 1916. Walter B. Maling, Clerk. [50]

[Title of Court and Cause.]

Affidavit of Edward C. Uren.

State of California,
City and County of San Francisco,—ss.

Edward C. Uren, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Nevada City, California.

That he is a mining engineer by profession, has

practiced his profession for a period of eighteen years; and that he has practiced his profession in most of the mining States of the United States.

That he has been in the Alleghany Mining District, Sierra County, California; that he has examined some of the operating mines in that district; that he has examined the Twenty-one Mine, including the Belmont, Tightner extension and Valentine claims, and made surveys underground and on the surface thereof, and has also made surveys on the surface of some of the other mines contiguous thereto; that he has been in the [51] Sixteen to One Mine.

That he is familiar with the shaft on the Sixteen to One Mine and has been down the shaft of said Sixteen to One Mine up the first two raises below the four hundred foot level that was delineated on Exhibit "A" of the map attached of Fred Searls, Jr.

That affiant is familiar with the tunnel commonly known and designated as the Twenty-one tunnel and marked on the said map Exhibit "B" attached to the affidavit of Fred Searls, Jr. as "Twenty-one Tunnel"; that said Twenty-one tunnel is driven on the vein, the top or apex of which, in the opinion of affiant, crops at the surface within the exterior boundaries of Twenty-one Mine; that the croppings or apex of said ledge are delineated on the map attached to this affidavit and marked Exhibit "A."

That in the opinion of affiant the ledge exhibited in the said Twenty-one tunnel is an entirely different ledge from the ledge shown in Tunnel No. 1,

Tunnel No. 2 and 100 foot level of the said Sixteen to One Mine.

That the croppings of said ledge so far as exhibited on the surface and known to affiant are marked upon said map Exhibit "A" hereto attached to this affidavit.

Affiant further says that in his opinion the croppings of the vein, upon which said vein the said Sixteen to One Mine shaft has been started, will on a northerly course cross the westerly side line of the said Sixteen to One Mine at or about the letter "Z" on the said map Exhibit "A" attached to this affidavit.

That affiant has on said map Exhibit "A" attached to this affidavit projected a line parallel to the end line of the [52] Sixteen to One Mine, which said projected line is on said map Exhibit "A" marked "YY."

Affiant further states that the said Sixteen to One vein is exposed at the surface of the earth at the mouth of the said upper tunnel or Tunnel No. 1 of the Sixteen to One Mine, and the said exposure of said outcrop or apex of said Sixteen to One vein crosses the southerly end of said quartz lode claim at said point.

That said outcrop or apex could be seen coursing northwesterly within the boundaries of said Sixteen to One claim for a distance of about 300 feet, same being exposed on the Tightner road; that protecting the course or strike of said vein as shown on the surface, to wit, from the said upper tunnel or Tunnel No. 1 of said Sixteen to One Mine to the place it

stands exposed where the Tightner road cuts it and from that point northwesterly it will, as stated above, pass out on the westerly side line of said Sixteen to One at the said point "Z."

Affiant further says that in his opinion if a raise be driven on the true dip of the vein from the face of the said vein or lower tunnel as shown upon the map Exhibit "A" (attached to the Scarfe affidavit) to follow said Sixteen to One vein upon its upward course on the face of said lower tunnel, will not reach the surface of the bed rock within the limits of the said Sixteen to One claim.

That affiant reiterates in his opinion said apex of said Sixteen to One vein, so called, will pass out of the westerly side line of said Sixteen to One Mine at the point "Z."

Affiant further asserts that the so-called Sixteen to One vein is not continuous from its apex, nor is it shown to be continuous from its apex much below the said Tunnel No. 2, and [53] that the vein is shown below said Tunnel No. 2 and at a point a short distance below the 100-foot level which may be the same vein that is shown in the said shaft at said Tunnel No. 2.

That the Twenty-One tunnel at or near the portal thereof, and as exhibited on Exhibit "A" attached hereto, was started on the same vein as is shown in the croppings on the only vein within the boundaries of said Sixteen to One vein crossing the south end line thereof, and was continued on said vein for a distance of 504 feet; that at said last-named point said Twenty-One tunnel left said so-called Sixteen to

One vein and was then continued as a cross-cut in an easterly direction and through the country rock approximately at right angles from the said Twenty-One tunnel, and was run about 160 feet from the place where said cross-cut began on said so-called Sixteen to One vein; that at said point the said cross-cut intercepted a distinct and separate vein, and being the same vein which is now sought to be attached by the said original Sixteen to One Mine, and which the said Sixteen to One Mine is now claiming.

That the said Twenty-One tunnel was then turned northerly and followed said vein, without break or interruption, to the present face of the said Twenty-One tunnel, all as shown on the said map Exhibit "A" attached hereto.

That on the surface of the said ground, within the lines of said Twenty-One Claim, at a point where Kanaka Creek crosses the said Twenty-One claim, there is shown on the surface two distinct and separate veins, separated by country rock, and about 130 feet distant from each other, the westerly vein being the so-called Sixteen to One vein, being the vein upon which said tunnel as aforesaid, and all of the indications on the [54] ground point to the fact that said easterly vein as it outcrops at Kanaka Creek is the vein cut by said Twenty-One Company at the eastern end of said cross-cut, and which was followed in the said tunnel to the face thereof.

That on the surface of the Twenty-One claim both said easterly and westerly veins can be traced from Kanaka Creek to the north end line of said Twenty-One claim. Both of said veins, as traced on the

ground, and being the apex of said veins, respectively, cross the north end line of said claim, the said westerly vein continuing on into said Sixteen to One claim at a point under the northwest corner of the Twenty-One claim, and the easterly vein crossing into the Tightner Extension claim and thence into the Belmont claim between corners B–1 and B–7 thereof, and from the said points on said creek where said two veins outcrop until they reach the north end line of said Twenty-One claim, said outcrops as exposed on the surface continue, in their northerly course, to diverge so that at the north end line of said Twenty-One claim said outcrops are about 300 feet apart, the said tracing of said apices of said east and west veins being fully delineated on the map marked Exhibit "A" annexed hereto.

That affiant has examined the said vein known as the east vein followed in said Twenty-One tunnel from said point where the same is first cut by said cross-cut run at said 504 foot point from the portal thereof, and has also examined the stopings thereon opening from said tunnel, and all of said stopings opening from said Twenty-One tunnel are on said east vein followed in said Twenty-One tunnel from said cross-cut, and all upraises from said tunnel are on said vein.

That the examination of said Sixteen to One shaft discloses that a large portion of the said shaft below the 400 [55] level is run entirely in country rock and is under the surface of the said Valentine claim, constituting a part of the said Twenty-One Mine, and being one of the locations included therein, and

that at the time the same was run and now the said shaft did not follow any vein at all, and that no vein is exposed in the said shaft, all as shown upon Exhibit "B" attached hereto.

Affiant further says that he gave to the said Scarfe a map that was delineated from surveys made by this affiant;

That this affiant notices on the map attached to the Scarfe affidavit, Exhibit "A," that portions of the map made by affiant have been copied or caused to be copied by the said Scarfe; that on the map shown by affiant to the said Scarfe the croppings of the easterly vein, upon which the easterly part of said Twenty-One tunnel is run, are delineated and are shown to be continuous to the northerly end line of said Twenty-One Mine, but that said Scarfe only copied said croppings to a point which affiant marks on the map attached to this affidavit as the point "A"; that upon the map that affiant showed to the said Scarfe the croppings of the said Sixteen to One vein, so-called, shown in the portal of the said Twenty-One tunnel aforesaid were marked as delineated on the map Exhibit "A" attached to this affidavit; that said Scarfe failed to copy the same into his affidavit filed in this court.

EDW. C. UREN.

Subscribed and sworn to before me this 8th day of August, 1916.

[Seal] RITA JOHNSON,

Notary Public in and for the City and County of San Francisco, State of California. [56]

(Here follows map.)

[Endorsed]: Filed August 14, 1916. Walter B. Maling, Clerk. [57]

[Title of Court and Cause.]
State of California,
City and County of San Francisco,—ss.

Counter-affidavit of S. B. Connor.

S. B. Connor, being first duly sworn, deposes and says: That he is the vice-president of the plaintiff corporation, and at one time was the president; that he has been familiar with the operation of said mine for three years last past and has taken a leading part in the management and operation of said mine, and has made it a point to gain information as to other mining operations in the Alleghany Mining District. That he has spent quite a number of years building mills and installing milling plants for mining operations, and by reason of this experience that he has become specially familiar with operating and construction costs and the value of milling plants; that he has read the affidavit of J. H. Hunt, dated August 10, 1916, and filed in the above-entitled action, and relating to the damage that the defendant and said Hunt will suffer in the event that they are restrained from working the ore in dispute.

That affiant has reliable information as to the character of the mills which said Hunt mentions in his affidavit, and has inspected a part of said plant. That it is affiant's opinion that ten thousand dollars [58] is a large valuation to place on said mills, and plant, as its present worth. That said plant cannot

mill efficiently fifty tons of said ore per day, or any amount like it, and probably that twenty-five tons is in excess of what could be actually milled efficiently and economically by said plant. That affiant because of his years of experience is familiar with the life of milling plants and that a depreciation of ten per cent per annum is considered excessive as an allowance for depreciation on such plants. That affiant built the North Star mill and plant at Grass Valley, California, in 1886, and with some changes and alterations it has been running ever since said date and is still running. That the Twenty-one track and tunnel referred to in said Hunt's affidavit if unused would require little repair, and that two hundred and fifty dollars per year would far more than cover such expense. That it would not be considered good mine management to keep a considerable force of men idle for any length of time, and that a reliable keeper to take sole charge of said property could be obtained for approximately one hundred dollars per month.

That the ore bodies in dispute and exposed in the Twenty-one tunnel and workings is very problematic in value, and no one could estimate with any certainty, or any degree of accuracy, what it would be capable of producing, since the ores characteristic of the Alleghany district, and of the territory in question, are extremely variable, the values running in comparatively local shoots, with large areas of low grade material between, the high grade ore occurring in bunches or pockets. That affiant's knowledge and examination of other mines in the districts,

and of the ore occurrences in the ground in question justify him in stating that there is no probability of any such amount of ore existing in the territory in dispute and of the grade stated as is set forth inferentially in said Hunt's affidavit.

That affiant has received from the county clerk of Sierra County what purports to be a copy of the written option referred to by said Hunt in his said affidavit, and that affiant has been informed that this is a copy [59] of the option filed by said Hunt in one of the recent high grade cases of People v. Packard, in Sierra County, wherein said Packard was being prosecuted for the alleged stealing of ore from the territory in dispute in the Twenty-one Mine.

That said J. H. Hunt was at the time of the execution of said alleged option the president of the defendant, and ever since has been; that at the date of said alleged option said Twenty-one tunnel had been extended into the territory here in dispute and that practically all of the mining that has been carried on since said time has been within the disputed ground, and that on various occasions representatives of the defendant have stated to representatives of the plaintiff that said tunnel was not run on the Sixteen to One vein, but on an entirely separate and distinct vein, and that within the past few months representatives of the plaintiff have brought to the knowledge of the defendant the fact that they were working on what appeared to be the Sixteen to One vein, but that defendant did not have positive proof of the fact that they were one and the same vein until the latter part of July, when its incline shaft connected

with the upraise of the Twenty-one tunnel.

That a copy of the option above referred to is attached hereto and made a part hereof.

S. B. CONNOR.

Subscribed and sworn to before me this 14th day of August, 1916.

[Seal] EUGENE W. LEVY,

Notary Public in and for the City and County of San Francisco, State of California. [60]

Contract, October 6, 1915, Between The Twenty-one Mining Co., and J. H. Hunt.

THIS CONTRACT made at the City and County of San Francisco, on the 6th day of October, one thousand nine hundred and fifteen (1915), by and between the Twenty-one Mining Company, a corporation duly organized and existing under and by virtue of the laws of Arizona, party of the first part, and J. H. Hunt, of San Francisco, party of the second part,

WITNESSETH:

THAT WHEREAS the party of the first part is the owner and in possession of the following lode mining claims, to wit:

"Twenty-One Quartz," "Belmont Quartz," "Tightner Extension Quartz" and "Valentine Quartz" lode mining claims, together with the appurtenances, all situated in one group near the town of Alleghany, Sierra County, California, and

WHEREAS, said party of the second part desires to take possession of the said property and to work, mine and improve the same, with a view to the purchase of the same;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter made to be kept and performed by the respective parties hereto, it is agreed:

That said party of the first part hereby grants to said party of the second part a lease and option to purchase the above described property upon the terms and conditions hereinafter set forth, provided, however, that it is distinctly understood and agreed that a failure to perform each and every of the conditions of this lease and option shall, at the option of the said party of the first part, subject this lease and option to cancellation.

The terms of this contract of lease and option are as follows, to wit:

That the said lessor, said Twenty-one Mining Company, for and in consideration of the royalties hereinafter reserved and the covenants and agreements hereinafter expressed by the lessee to be made and performed, does hereby demise and let and by these presents does demise and let unto the said lessee all of the said property hereinabove described, to have and to [61] hold the same and to work and mine the same until the 6th day of October, one thousand nine hundred and twenty (1920) unless sooner forfeited and determined through a failure of any of the covenants of this contract.

That in working and mining the said property the said party of the second part shall have the right to extract ores therein and to reduce the same so as to extract the mineral therefrom by any method appropriate to the character of ore mined.

That in consideration of said lease, the lessee covenants and agrees with said lessor as follows, to wit:

To enter upon said mining claims and premises and mine and work the same in a good minerlike manner for the purpose of developing the same into a producing mine and paying the purchase price hereinafter mentioned, and with that in view may extract and work the ores therefrom.

On or before the 1st day of December, one thousand nine hundred and fifteen (1915) said party of the second part to take possession of said mining claim and premises and to commence to work, mine and improve the same with reasonable diligence, and to commence to construct an air-compressor plant and electric power plant, which power plant shall be of sufficient power capacity to run the said compressor plant, the whole to be completed on or before the 31st day of December, 1915.

That said improvements mentioned in the last paragraph shall be situated upon said property and convenient to the tunnel on said property and become part of said property, to the end that the same shall pass to the said party of the first part in case of a forfeiture of this contract.

To well and sufficiently timber all workings on said premises at all points where property or necessary in accordance with good mining and to repair all timbering and to keep in good repair all timbering on said property.

To permit the said party of the first part and its agents to enter into and upon all parts of the workings of said mining claims for the [62] purpose

of inspecting the same, and for the purpose of posting any notices of nonliability for materials furnished, work done or damages under the statutes of this State, and to permit such notices to remain upon the said premises, to the end that said party of the first part may be kept fully informed as to the workings on said property and of the output from the same.

To hold all new discoveries within the lines of said claims for said party of the first part.

That in consideration of the said acceptance of this lease and option and the expenditures to be made thereunder, and the faithful keeping of the covenants hereof, the said party of the second part shall have the right to purchase the said demised premises at any time on or before the 6th day of October, one thousand nine hundred and twenty (1920) for the full sum of two hundred and fifty thousand (250,000) dollars, payable as follows:

One hundred and twenty-five thousand (125,000) dollars on or before the 6th day of October, one thousand nine hundred and eighteen (1918); and the balance of one hundred and twenty-five thousand (125,000) dollars on or before the 6th day of October, one thousand nine hundred and twenty (1920), provided that out of the gross product of all ores extracted from the said property, twenty-five (25) per cent, gross, of all ore yielding fifty (50) dollars, gross, per ton or less shall be the property of said party of the first part, and fifty (50) per cent gross, of all ore yielding above fifty (50) dollars, gross, per ton, shall be the property of said party of the first part.

That all of said royalty shall be paid to said party of the first part and credited on the installment of purchase price next due, and shall apply to all ores extracted.

That in case any ore is extracted from said property and worked, there shall be settlements as to the output of said property at intervals of not to exceed one (1) month, and within fifteen (15) days thereafter the said payment of said royalty shall be made to said party of the first part, whereupon the balance of the said gross product shall be the property [63] of the said party of the second part, and all of said ores and values extracted from said property shall be the property of said party of the first part until such settlement is made.

All payments of said purchase price, either in cash or from said gross proceeds, shall be made at the Bank of California, in the City and County of San Francisco, State of California, to the credit of said party of the first part.

That upon the payment by the party of the second part to the party of the first part of the first payment of one hundred and twenty-five thousand (125,000) dollars on or before October 6th, 1918, and provided said party of the second part shall have up to that time well and faithfully performed all of the covenants of this contract, said party of the first part shall deposit in escrow in the Bank of California a good and sufficient deed of the said property purporting to convey all of the said property to said party of the second part, and shall therewith deposit escrow instructions addressed to the said bank to deliver the

said deed to the said party of the second part upon the payment of the said purchase price hereinabove mentioned at the times and as herein provided, provided that if the terms of this contract are not complied with the said deed shall be returned to said party of the first part, and a joint letter of the parties hereto showing the noncompliance of any of the terms hereof not apparent to said bank shall be conclusive evidence to said bank that the said escrow has not been complied with and shall permit a return of said papers.

That the party of the first part shall have the privilege of selecting one man who is a competent miner, who shall be employed and paid by the party of the second part and who shall have the right and privilege of inspecting all parts of the workings on said premises at all times and who shall also be given the privilege of inspecting all ore or bullion shipments, and reporting to the party of the first part herein. If, however, for any good and sufficient reason said representative of the party of the first part [64] shall quit or be discharged said party of the first part shall have the right to select a substitute to take his place; it being the general intent of this clause that the party of the first part shall at all times have one representative upon the premises in the employ of and paid by the said party of the second part, who shall report to the party of the first part any and all matters concerning the premises and the working thereof and the shipment of the ores therefrom, provided that it is understood that said representative shall work on the said property

and shall be under orders in all other things of the superintendent therein, and shall comply with the reasonable regulations binding all workmen in said mine.

That all of the said working of said property and the reduction of the ores therefrom shall be at the expense of said party of the second part, and said party of the first part shall not be liable in any way therefor, and said property shall not be encumbered by any liens for labor done or materials furnished therefor.

That said party of the first part shall have the right to post on said property the notice of nonliability provided for by the laws of this State, and also a notice that it shall not be liable for any damages for personal injuries to any of the workmen on said property, and in that behalf said party of the second part shall insure all of its workmen in some insurance company as provided for by the Workmen's Compensation Act of this State.

That on or before the 1st day of December, one thousand nine hundred and fifteen (1915) said party of the second part shall take possession of said mining claims and premises and commence work thereon as hereinabove provided, and shall continue to work and operate said mine, performing not less than one hundred and twenty (120) shifts per month continuously thereafter during the life of this agreement. A cessation of such operations continuously for a period of sixty (60) days shall subject this lease and contract to cancellation at the option of the party of the first part, upon written notice to the party of

the second part that if operations are not resumed within fifteen (15) days thereafter, this agreement shall be terminated. [65]

That time is of the essence of this contract and if said payments are not made, or if said percentage of said gross proceeds is not accounted for or the said property worked and mined, or if any other condition or term of this contract is not complied with, all as herein provided, by said party of the second part, then all rights hereunder cease and said party of the first part shall re-enter and take possession of all of said property and any added improvements put on or used therewith, and may retain any payment of cash or out of said gross proceeds theretofore made, it being understood that the noncompliance with any of the terms of this contract shall create a forfeiture not only of all rights thereunder, but of all payments, and all property put upon the said mining claims or used therewith, the whole thereupon to become the property of said party of the first part and be forfeited with said payments and rights.

It is further understood by and between the parties to this contract that said party of the second part has full information of the action of William Flinn vs. Twenty-One Mining Company, and others, that in case final judgment is recovered in said action by the plaintiff therein which in any way encumbers said property, or any part thereof, or in any way subordinates this contract to the lien of said judgment, that in case said party of the first part does not immediately satisfy the same that said party of

the second part shall have the right to satisfy the said judgment and charge the cost of same to any installment of said purchase price then due or which may become due.

That said party of the first part shall proceed at its own expense with the patent proceedings now pending for obtaining the patent of the United States to the above group of mines, and shall likewise at its own expense defend any actions which may be commenced concerning the *title said* property, in said patent proceedings.

That this contract is an option and not a contract to purchase, and said party of the second part has the right to abandon the same at any time without penalty other than the forfeitures above provided. [66]

IN WITNESS WHEREOF, the party of the first part has caused this contract to be executed by and through its president and secretary and under its corporate seal, and the party of the second part has hereunto set his hand and seal the day and year first above written.

[Seal] TWENTY-ONE MINING COMPANY.

By J. H. HUNT,
President.

L. A. MAISON,
Secretary.

J. H. HUNT.

We, the undersigned, constituting a majority of the board of directors of the Twenty-one Mining Company and owning jointly more than two-thirds

of its capital stock, hereby agree to the execution of the foregoing option and contract and agree to vote at the next meeting of the board of directors of said Twenty-one Mining Company to ratify, confirm and approve the same.

J. H. HUNT.
F. M. PHELPS.
MANSFIELD LOVELL.

[Endorsed]: Filed August 14, 1916. Walter B. Maling, Clerk. [67]

[Title of Court and Cause.]

Counter-affidavit of Andrew C. Lawson.

State of California,
City and County of San Francisco,—ss.

Andrew C. Lawson, being first duly sworn, deposes and says:

That he is a citizen of the United States, and a resident of Berkeley, California;

That he is a geologist by profession and has practiced his profession continuously for a period of thirty-three (33) years; that he received his scientific education at the University of Toronto and at John Hopkins University, Baltimore, Maryland; that he has practiced his profession in Canada, Alaska, the Western States of the United States, Mexico and Central America; and that he has pursued geological studies of mines in Europe and Asia; that for twenty-six years he has been professor of geology and mineralogy in the University of California; that he is at present Dean of the College of Mining in the

University of California; that in the practice of his profession and in the teaching of [68] students he has given particular attention to ore deposits and has studied many quartz mines in California and elsewhere.

That on the 10th, 11th and 12th days of August, 1916, he examined the Sixteen to One Mine for the purpose of determining the position of the apex of the vein exposed and exploited in the said mine with relation to the boundary lines of the Sixteen to One quartz lode mining claim, and for the further purpose of determining the relation between the vein exposed and exploited in the workings of the Sixteen to One Mine and the vein exposed and exploited in the workings of the Twenty-One Mine; that in the pursuit of this inquiry he also examined the workings of the Twenty-One Mine and the vein exposed therein.

Affiant declares that the vein known as the Sixteen to One vein is exposed at the surface of the earth at the portal of the tunnel known as the Number One tunnel of the Sixteen to One Mine, as the same is delineated upon the map, Exhibit "A," accompanying the affidavit of George O. Scarfe, previously filed; that said exposure is on the Sixteen to One quartz lode mining claim, close to the southeast end line of said claim; that within the said Number One tunnel the vein is continuously exposed for a distance of two hundred and seventy-five (275) feet to the face of the tunnel, with a course or strike of N. 40 degrees W. and an average dip to the northeast of about 30 degrees; that the said Number One tun-

nel and the exposure of the vein throughout its length, are wholly within the boundaries of the Sixteen to One quartz lode mining claim; that in the said Number One tunnel at a point 100 feet in from the [69] portal a raise has been made upon the vein, the top of which raise, at the time when affiant last saw it, was thirty-eight (38) feet above the floor of the said tunnel, or within about twenty-five (25) feet of the surface measured along the dip of the vein; that said raise was wholly in the vein and exposed much quartz continuously from the tunnel to the top of the raise.

Affiant further declares that he carefully examined the surface of the ground for exposures of the apex of the vein on the hillside above the portal of the said Number One tunnel and saw several small exposures of quartz one of which he believes to be the outcrop of the vein, but owing to the obscurity of the ground and the lack of trenches he could not trace the course of the outcrop or apex at the surface; affiant further declares that a large portion of the area of the Sixteen to One mining claim is occupied by ancient stream gravel and volcanic rocks, which mantle the bedrock surface where the vein on its upward course may be reasonably expected to emerge and that it is "blind" for a great portion of its extent.

Affiant further declares that, notwithstanding the obscurity of the surface and the mantle of stream gravel and volcanic material, there can be no reasonable doubt of the fact that the top or apex of the vein lies wholly within the boundaries of the Sixteen

to One claim for a distance of several hundred feet measured northwesterly from the portal of the said Number One tunnel at the southeast end line of the claim; that his deliberate opinion, based on the observed feature of the vein, its strike and dip, as exposed in the said Number One tunnel, and other [70] workings of the mine is that the top or apex of the vein lies wholly within the boundaries of the Sixteen to One quartz lode mining claim for a distance of at least seven hundred (700) feet, measured northwesterly from the southeast end line of the said Sixteen to One claim, and the probabilities are that it continues for a great distance within the surface boundaries of said claim;

Affiant further declares that he has continuously followed and observed the Sixteen to One vein from the said Number One tunnel down the dip through raises and stopes to the Number Two tunnel, as the same is delineated on Scarfe's Map Exhibit "A," accompanying his affidavit previously filed.

Affiant further declares that except for the cross-cut adit of about one hundred and twenty-five (125) feet in from the portal to where the vein is encountered and except for the east cross-cut near the end of the tunnel, said Number Two tunnel follows the Sixteen to One vein to its face exposing it continuously, with a somewhat varying course, for a distance of over eight hundred (800) feet;

Affiant further declares that at the northwest end of the said Number Two tunnel a raise is now being driven and that when he last examined this raise it was at the then top about ninety (90) feet above the level, measured on the dip, and that the raise ex-

posed the vein continuously to the top, the angle of dip in the raise being 50 degrees;

Affiant further declares that from the said Number Two tunnel he has followed and observed the vein continuously on the dip down the Sixteen to One shaft as the same is delineated upon Scarfe's Map Exhibit "A," accompanying [71] his affidavit previously filed, to the 100-foot level, and has observed the vein not only in the shaft, but also in three intermediate levels between Number Two tunnel and the 100-foot level, two on the north side and one on the south side of the shaft; that on the 100-foot level the vein is chiefly immediately below the shaft, and is well exposed in the drifts to the north and to the southeast and in raises therefrom; but that in the shaft, and separated from the main vein by a horse a few feet thick, is a hanging-wall branch or spur of the vein.

Affiant further declares that from the 100-foot level he has followed and observed the vein continuously on the dip down the Sixteen to One shaft to the 150-foot level at which level it is dislocated by a fault having a strike of about N. 20 degrees W. and practically vertical; that on the north side of the shaft, just inside the northwest drift from the 150 station, the abutment of the vein upon this fault is well exposed, and that on south side of the shaft the same abutment is seen a little above the station, the fault crossing the shaft obliquely.

Affiant further declares that in descending the shaft from the 150-foot level, on the east side of the fault, he first encountered the country rock of the

hanging-wall for a few feet and then the faulted segment of the small hanging-wall spur or branch of the vein above referred to, and then country rock to a point ten feet below the 200-foot level, at which point the upper side or hanging-wall of the faulted segment of the main vein was again encountered on the lower side of the shaft, and was thence followed and observed continuously down the shaft on the dip to the 300-foot [72] level.

Affiant further declares that between the 200-foot level and the 300-foot level the dip of the vein is at a lower angle than the inclination of the working shaft, so that the vein passes into the floor of the inclined shaft 10 feet below the 200 station, and abuts upon the fault above referred to about 20 feet back of the shaft, as is clearly shown in a raise from the 250 level.

Affiant further declares that, from a consideration of the phenomena observed and here in part recited, it is his deliberate opinion that the Sixteen to One vein has suffered a dislocation or minor displacement on the fault exposed at the 150-foot level, the vertical component of which is about thirty-five feet, and that this displacement in no way obscures the identity of the faulted segments as portions of one and the same vein.

Affiant further declares that the Sixteen to One vein, which he followed in the shaft on the dip and observed to the 250-foot level, below the aforesaid minor displacement, is continuously exposed in both drifts from the 250 station to the respective faces of these drifts, the length of the north drift being over

five hundred (500) feet, and that of the south drift sixty (60) feet, and is further exposed in raises above these levels.

Affiant further declares that the Sixteen to One vein which he followed continuously on the dip in the shaft from the 250-foot level to the 300-foot level is at the station of the latter level again displaced by a minor fault; that at the station the quartz of the vein may be seen in good exposure to abut on its downward course against [73] the aforesaid fault, the quartz being absent on the northeast side of the fault by reason of a slight down throw on that side; but that about 20 feet down the shaft below the 300-foot station the down thrown segment of the vein is again encountered, with a smaller angle of dip than the inclination of the shaft, so that it passes beneath the shaft at the station, and is due to abut on its upward course upon the aforesaid fault not more than ten (10) feet below the 300-foot station.

Affiant further declares that, from a consideration of the phenomena observed and here in part recited, it is his deliberate opinion that the Sixteen to One vein has suffered a minor displacement, the vertical component of which is about 15 feet, and that the displacement in no way obscures the identity of the faulted segments as portions of one and the same vein.

Affiant further declares that from a point 20 feet below the 300-foot station measured along the length of the shaft he followed the Sixteen to One vein on its downward course and observed it in the shaft to a point about 70 feet below the 400-foot station, at

which point the vein, its angle of dip being less than the inclination of the shaft, passes into the roof of the inclined shaft.

Affiant further declares that from the aforesaid point, about 70 feet down the shaft from the 400-foot station, to the bottom of the shaft the Sixteen to One vein is over the shaft; that he observed it in this position in three short raises run into the roof of the shaft, the first of these being about 140 feet down from the 400-foot station where the vein is exposed for a thickness of five (5) [74] feet of solid quartz and two (2) feet of crushed vein matter, the footwall of the vein being twelve (12) feet above the floor of the inclined shaft, measured in a direction at right angles to the direction of dip; the second raise being eighty (80) feet further down the shaft, where the vein is exposed for a thickness of five (5) feet, of which three (3) feet is ribboned quartz, the footwall of the vein being 20 feet above the floor of the inclined shaft, measured at right angles to the direction of dip; and the third raise being 55 feet further down the shaft and near the bottom of the shaft, where the vein is exposed about 25 feet above the bottom of the shaft, measured in a direction at right angles to the dip.

Affiant further declares that at the top of the last-mentioned raise from the bottom of the shaft he passed through a short drift driven in the vein to another raise on the vein from the Twenty-one tunnel; that he descended this raise following the vein on its dip and observing it continuously to the level of the Twenty-one tunnel, at a point between Stations 41 and 42 of Scarfe's Map, Exhibit "A."

Affiant further declares that the vein which he thus followed practically continuously, except for two minor faults, from its apex on the surface of the earth, at the portal of the Number One tunnel of the Sixteen to One Mine, to the Twenty-one tunnel level is the same vein as that exposed in the Twenty-one tunnel from Station 16, as marked on Scarfe's Map. Exhibit "A," to the face of said Twenty-one tunnel beyond Station 48 of the same map; that from Station 16 to the face of the tunnel he has followed the vein on its strike and observed it continuously; that there is no essential [75] interruption in the continuity of the vein from the Number One tunnel of the Sixteen to One Mine to the Twenty-one tunnel, nor any reason to doubt its identity throughout; that there is no change in its physical characteristics, mineral contents, character of walls, general dip and strike or in any other feature to suggest that there may be two veins and not one.

Affiant states that he has read an affidavit of Ed. C. Uren, dated August 8th, 1916, to which are attached Map Exhibits "A" and "B" and examined said maps; that the course of the apex of the Sixteen to One vein after it crosses the southerly end line of the Sixteen to One claim will naturally bear to the northwest for a short distance owing to the fact that the surface of the bedrock rises rather steeply as one travels northerly but that when the gravel channel is encountered the original bedrock surface now covered by the gravels and volcanic material becomes much flatter and the slope may even be reversed which will result in causing the course of the "blind"

outcrop or apex of the Sixteen to One vein underneath the gravels to bear more nearly to the north or more nearly parallel to its true strike as revealed in the drifts of the Sixteen to One Mine. Affiant further states that there are no mine workings or exposures and nothing to suggest that there is any vein occupying the position of the steeply dipping vein indicated on said Uren cross-section, Exhibit "B" between the so-called "Twenty-one outcrop" and the point down the Sixteen to One shaft below the 400 level.

(Signed) ANDREW C. LAWSON.

Subscribed and sworn to before me, this 15th day of August, 1916.

[Seal] FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California. [76]

[Endorsed]: Filed Aug. 16, 1916. Walter B. Maling, Clerk. [77]

[Title of Court and Cause.]

Counter-affidavit of S. B. Connor, Filed August 16, 1916.

State of California,
City and County of San Francisco,—ss.

S. B. Connor, being first duly sworn, deposes and says: That he is the vice-president of the plaintiff company and for upwards of three years last past has taken a leading part in the operations of said mine; that in April, 1913, at a time when said affiant had a very small interest in said company, a

cross-cut from the Number Two tunnel level was started to the east and which penetrated beneath the surface ground now claimed by the defendant; that said affiant had no part in the active management at that time and said work was entirely conducted under a previous mine management; that said affiant talked the matter over with some of his associates at that time and they thought it was absolutely foolish and not proper development work, but in spite of this opinion said cross-cut was driven easterly until some time in October, 1913, when work was stopped, and no work [78] has been prosecuted since said time in driving the said cross-cut further. And affiant declares that no vein was ever encountered in said cross-cut and no ore was ever extracted therefrom.

That said affiant has had an experience extending over forty years in the development of mines and the running of mine workings and that it is the universal practice in following a vein either horizontally or on its inclination to drive such working on a more or less straight course rather than to follow all of the undulations and rolls of the actual vein so long as the working keeps in close touch with the vein; that it would be a practicable and economic impossibility to follow all the sinuosities of the vein and keep the working entirely within the vein, more especially in the sinking of an incline shaft and in the case of a working incline shaft a nearly straight course must be followed in order that the necessary track and working of hoisting, etc., can be carried on efficiently. Where the general course of the vein

changes abruptly, a change of direction in the shaft will naturally follow in order to keep in close touch with the vein. In sinking the incline shaft on the Sixteen to One vein the superintendent at the mine used his best judgment in following the vein, and that the departure of the shaft from the vein is not greater than will be justified in economic and practical mining. The only idea in sinking said incline shaft was to follow the vein.

S. B. CONNOR.

Subscribed and sworn to before me this 16th day of August, 1916.

[Seal] EUGENE W. LEVY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 16, 1916. Walter B. Maling, Clerk. [79]

[Title of Court and Cause.]

Counter-affidavit of William A. Simkins.

State of California,
City and County of San Francisco,—ss.

William A. Simkins, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Reno, Nevada.

That he is a mining engineer by profession, and has practiced his profession continuously for a period of eleven (11) years; that he received his technical training at the University of Michigan, and

has practiced his profession in most of the mining states of the United States.

That he has on two occasions visited the Sixteen to One Mine, Inc., and that on the 13th and 14th days of July, also on the 10th, 11th and 12th of August, 1916, he examined the said Sixteen to One Mine for the purpose of investigating the position of the apex of the vein exposed in the said mine with relation to the boundary lines of the Sixteen to One [80] quartz lode mining claim and the relation between the vein exposed in the workings of the Twenty-one Mining Company. And affiant further declares that he has examined said workings of said Sixteen to One Mine and the workings of said Twenty-one Mine lying underneath the surface lines of the Twenty-one, Valentine and Eclipse Extension, and other adjoining mining claims which workings are exhibited on the map Exhibit "A" accompanying the affidavit of George O. Scarfe.

That he has read the affidavit of Ed. C. Uren filed by defendant and has examined Map Exhibits "A" and "B" attached thereto.

Affiant declares that the apex of a vein known as the Sixteen to One vein is exposed in the entrance to the working known as tunnel Number One, which is at the southerly end line of the said Sixteen to One claim. That said tunnel Number One follows and exposes said Sixteen to One vein for the entire length of said tunnel Number One from the mouth to the face of said tunnel. That such opening determines the strike of said Sixteen to One vein in a horizontal plane at the elevation of said tunnel level and

that the strike of said Sixteen to One vein is N. 40° W. and that said vein departs from the horizontal on its upward course to the SW. with an average dip of 30 degrees.

Affiant further declares that the strike of the apex of said Sixteen to One vein at the surface departs from the strike of said tunnel Number One at an angle of 30 degrees to the west. That said departure of strike is due to the configuration of the hill which rises abruptly above the entrance to said Number One tunnel. That said apex continues in the direction of N. 70 degrees W. for a distance of approximately [81] 150 feet, where the contour of the hill is changed to a strike of approximately N. 20 degrees W. by a gulch, which gulch has a general course of S. 20 degrees east. That owing to the change in contour occasioned by said gulch, the course of the outcrop of said Sixteen to One vein would be deflected easterly on its northward continuation until it passes under a gravel channel which overlies the original country rock in which said Sixteen to One vein is contained. That the said gravel channel lies upon a roughly level surface and that the course of the outcrop of said Sixteen to One vein under the said gravel channel would be roughly parallel to the said tunnel Number One; and that it is his opinion, based upon all of the facts shown, that the apex of the said Sixteen to One vein lies wholly within the surface boundaries of the said Sixteen to One lode mining claim and will pass through both end lines thereof; that if the apex of said Sixteen to One vein shall be found on further exploration to depart through the westerly side line of said claim,

the point of such departure will be more than 750 ft. northerly of the point where said vein enters the southerly end line of said Sixteen to One claim. That this is a fact is further established by the upraise now being driven from the extreme northerly face of the Number Two tunnel which raise was 90 feet upon the incline exposing the Sixteen to One vein continuously with an average dip of 50 degrees which if projected up to the old bedrock surface underlying the gravel channel will apex not far from the center or lode line of the Sixteen to One claim and about 720 feet northerly of the southerly end line of said Sixteen to One claim.

Affiant further declares that he examined the [82] surface ground lying to the south of the southerly end line of said Sixteen to One claim and could find no outcrop or apex of any vein for a distance of several hundred feet owing to a covering of soil, loose rock and underbrush. That it is extremely doubtful if any apex can be traced on the surface as indicated by the red line marked "Apex of Sixteen to One vein" on the said Exhibit "A" accompanying affidavit of deponent Edward C. Uren, and that said red line is a theoretical and conjectural line for a great part of its length.

Affiant further declares that said Sixteen to One vein can be traced continuously from said tunnel Number One downward on its dip, in the Sixteen to One shaft, or closely connected workings, to the 150-ft. level where said vein is displaced downward thirty feet by a fault which is nearly vertical. That the said Sixteen to One vein is observable below said

fault at a point in said shaft fifteen feet below the 200-ft. level and is thence visible in said shaft on its downward course to the 400-ft. level. That the said Sixteen to One shaft has been enlarged beyond its normal size for a distance of 20 feet below the said 400-ft. level by excavation in the hanging-wall of said shaft, and that said Sixteen to One vein is plainly visible in said excavation. That said vein where exposed in said excavation has a dip of 25 degrees to the east and has all other features of regularity and similarity which are visible in said shaft above. That said Sixteen to One vein is again exposed in the top or hanging-wall side of said shaft at a point 80 feet downward from said 400-ft. level; and that there is no apparent change in the country rock below said 400-ft. level, and that there are no workings whatsoever to show a sudden upward turning [83] of the so-called Twenty-one vein or of any vein, as indicated by the broken red line on Exhibit "B" accompanying affidavit of said Edward C. Uren.

That the working known as the Twenty-one tunnel has its entrance at the apex of a vein and that said tunnel follows said vein for a distance of 504 feet. That said vein has an average dip of 50 degrees from the horizontal upward to the west for the first 90 feet of said tunnel and that said vein gradually assumes a vertical position as it is followed northward in said Twenty-one tunnel for a distance of 370 feet and that the said vein turns over at said 370 ft. north from the portal of said tunnel and dips eastward on its upward course and at the northerly exposure of said vein in said tunnel its dip is 80 degrees; that at a point 504 ft. northerly from the portal of said tun-

nel, the said tunnel was turned to the east and cross-cut the country rock for a distance of 160 ft. that at the easterly end of said cross-cut, a second vein was encountered and that from said point the said tunnel has been driven in a northwesterly direction several hundred feet and to its extreme face has been driven continuously on said vein which is the same vein which apexes in the Sixteen to One claim and described hereinbefore.

Affiant further declares that the Sixteen to One vein, which is exposed in the entrance to the working tunnel known as Tunnel No. 1, of said Sixteen to One Mine, which is at the southerly end line of the said Sixteen to One claim, is the same vein which is followed horizontally in said Sixteen to One Tunnel No. 1 from the mouth to the face of said tunnel a distance of 290 feet; that the Sixteen to One shaft follows down on said vein, or immediately adjacent thereto, [84] continuously, except for two minor faults, from the top to the bottom of said shaft, and into the main Twenty-one tunnel, and that said Twenty-one tunnel follows said vein from the point where the shaft connection is made to the face of said Twenty-one tunnel a distance of 290 feet; that the same vein was followed on its course or strike N. 40 degrees W. in Sixteen to One Tunnel No. 2 from the said Sixteen to One shaft to the face of said Sixteen to One Tunnel No. 2, a distance of 650 feet; that there is no reason to doubt that the said Sixteen to One vein is the only vein exposed in all of said workings in the said Sixteen to One Mine, and in the workings of the Twenty-one Mine, from

the point where the Sixteen to One shaft connects with said tunnel; that in the opinion of affiant, there is nothing in the said workings of either of said mines to indicate the presence of any, other than the said Sixteen to One vein, except in the southerly end of the said Twenty-one claim, a distance of approximately 1100 feet from the workings above described.

Affiant further declares that there is nothing in the mine workings of either the Twenty-One Mine or of the Sixteen to One Mine, nor in the geological conditions shown therein, to suggest the presence of the steeply dipping vein, which is projected in a dotted red line, upon the map known as exhibit "B" attached to the affidavit of Ed. C. Uren, and which is made to appear as extending downward almost vertically from a point on the surface on the Belmont claim, to a point in or immediately above said Sixteen to One shaft, at a point 300 feet upward in said shaft from the Twenty-One tunnel. [85]

Affiant further declares that it is the usual practice to run mine workings in or near the vein and that where the vein has many undulations it would be impractical and uneconomic to follow all the variations of the vein, but the miner does the best he can.

WILLIAM A. SIMKINS.

Subscribed and sworn to before me this 16th day of August, 1916.

[Seal] FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 16, 1916. Walter B. Maling, Clerk. [86]

[Title of Court and Cause.]

Notice of Motion to Compel Defendant to Furnish Bond Pending Litigation.

To the Twenty-one Mining Company, a Corporation, Defendant, and to Frank R. Wehe & W. H. Metson, its Attorneys:

You will please take notice that the plaintiff in the above-entitled action will through its attorneys on Monday, September 9th, 1916, at 10 o'clock A. M. or as soon thereafter as counsel can be heard at the courtroom of the above-entitled court in the City and County of San Francisco, move the Honorable Court to make an order compelling said defendant to furnish a bond in the sum of thirty thousand ($30,000) dollars with sureties to be approved by a Judge of the said court and conditioned upon the payment of such costs and damages as may be incurred or suffered by the plaintiff or by any party who may be found to have been wrongfully injured by reason of said plaintiff's refraining from mining ores in the disputed territory and conseqeuent inability to operate its plant as pending this litigation, and for such further relief as to said Court may seem meet and equitable. [87]

Said motion will be based on the pleadings and other papers already on file in this action and on the affidavit of S. B. Connor filed herewith.

Dated October 3d, 1916.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.

Copy received this 3d day of October, 1916.

WM. H. METSON,
FRANK R. WEHE,
Attorneys for Defendant.

[Endorsed]: Filed Oct. 3, 1916. Walter B. Maling, Clerk. [88]

[Title of Court and Cause.]

Memorandum Opinion.

WILLIAM E. COLBY and GRANT H. SMITH, for Plaintiff.

W. H. METSON and FRANK R. WEHE, for Defendant.

VAN FLEET, District Judge.

Further consideration of the showing made on the defendant's application to dissolve the preliminary injunction heretofore granted plaintiff satisfies me that the facts make the case one for a reciprocal or cross-injunction, within the principles stated in Maloney vs. King, 76 Pac. 939, 940, and Johnson vs. Hall, 9 S. E. 783, cited by plaintiff, rather than for the application of the rule contended for by defendant.

This conclusion, I find, coincides with the views of Judge Hunt, before whom the matter was partially heard and with whom, as suggested at the argument, I have taken occasion to confer.

Accordingly the motion to dissolve the injunction will be denied; but a cross-injunction may be had restraining the plaintiff pending the suit from further prosecuting mining operations on the disputed

vein upon defendant giving a bond in the sum of $30,000 to indemnify plaintiff against any damages suffered by plaintiff from such restraint.

[Endorsed]: Filed December 15, 1916. Walter B. Maling, Clerk. [89]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, Second Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 15th day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 292—EQUITY.

ORIGINAL SIXTEEN TO ONE MINE, INC.

vs.

TWENTY-ONE MINING CO.

Order Denying Defendant's Motion to Dissolve Preliminary Injunction, etc.

Defendant's motion to dissolve the preliminary injunction heretofore granted plaintiff, having been submitted and being now fully considered and the Court having filed its memorandum opinion, it is ordered that said motion be denied but a cross-injunction may be had restraining the plaintiff pending the suit from further prosecuting mining operations on the disputed vein upon defendant giving a bond

in the sum of $30,000 to indemnify plaintiff against any damages suffered by plaintiff for such restraint. [90]

[Title of Court and Cause.]

Defendant's Proposed Bill of Exceptions on Appeal from Order Refusing to Dissolve Preliminary Injunction Heretofore Entered in Said Suit.

BE IT REMEMBERED that on the 22d day of August, 1916, at the hour of 3:30 o'clock P. M., the Honorable WILLIAM C. VAN FLEET, District Judge of the above-entitled court, issued a preliminary injunction in the above-entitled action directed to the defendant Twenty-one Mining Company, its officers, agents, servants, employees and attorneys and those in active concert or participating with said defendant, which said preliminary injunction is in words and figures following, to wit:

[Title of Court and Cause.]

PRELIMINARY INJUNCTION.

Plaintiff's application for a preliminary injunction having been presented to this Court and having regularly come up for hearing and both parties having been represented by counsel and affidavits and authorities having been filed on behalf of each party, and said matter having been submitted and the Court having given due consideration to the same, and it [91] appearing to this Court from said affidavits and the pleadings of the respective parties on file herein that there is reasonable ground for issuing a preliminary injunction and that plaintiff has at least

made out a *prima facie* ownership of the Sixteen to One mining claim and to the apex of the vein existing in said claim for a length of at least seven hundred and fifty feet from its southerly end line and the right to follow the same on its downward course between the planes hereinafter defined and that defendant or those acting under it through its Twenty-one tunnel and workings has penetrated said segment of said vein and was up to the time of the issuance of the temporary restraining order by this Court in this matter engaged in mining, extracting and removing of quantities of gold ore therefrom, much of which ore occurs in rich shoots and pockets of local extent, and large values amounting to thousands of dollars can be extracted within a very short time, and after its removal no evidence remains of the value or grade of the ore so extracted and which mining unless enjoined *pendente lite* will produce great and irreparable injury and damage to plaintiff in the event that on the trial of the issues the plaintiff should succeed in establishing its allegations; upon consideration whereof a temporary injunction is allowed, and

IT IS ORDERED that the defendant, the Twenty-one Mining Company, its officers, agents, servants, employees and attorneys and those in active concert or participating with said defendant be and they are hereby enjoined until further order of this Court, from further working or mining or extracting or removing ore or milling or treating or otherwise disposing of any ore extracted from any portion of that segment of the vein which is disclosed

in the main incline shaft of the plaintiff and in the tunnel and other workings of the defendant between a vertical plane passed through the southerly end line of the Sixteen to One claim, which line is described as commenced at a point whence the quarter section corner between Section 34, Township 19 North, Range 10 East, M. D. M., and Section 3, Township 18 North, Range 10 East, M. D. M., bears 15 degrees 50 minutes East 431 feet distant; and thence [92] said end line runs south 54 degrees 18 minutes West 353.7 feet to the southwest corner of said Sixteen to One claim, and another vertical plane situated parallel thereto and distant 750 feet northwesterly therefrom, both of said planes being extended indefinitely in a northeasterly direction.

This preliminary injunction shall not take effect until plaintiff shall enter into a good and sufficient bond in the sum of thirty thousand dollars ($30,000) *dollars,* with Sureties to be approved by a Judge of said court, to be filed with the clerk of said court, conditioned upon the payment of such costs and damages as may be incurred or suffered by the defendant or by any party who may be found to have been wrongfully enjoined or restrained thereby.

Dated San Francisco, California, August 22d, 1916, 3:30 o'clock P. M.

(Signed) WM. C. VAN FLEET,
District Judge. [93]

That thereafter the said defendant presented its bond in the sum of thirty thousand dollars ($30,000) as provided for in said preliminary injunction, which said bond was approved by the said Honor-

able William C. Van Fleet, District Judge, and filed.

That thereafter the defendant served upon the plaintiff its Notice of Motion to dissolve the preliminary injunction, which said Notice of Motion is in the words and figures following, to wit: **[94]**

[Title of Court and Cause.]

Notice of Motion to Dissolve Preliminary Injunction.

To the Original Sixteen to One Mine, Inc., a Corporation, Plaintiff, to and William E. Colby and Grant H. Smith, Its Attorneys:

You will please take notice that the defendant in the above-entitled action will, through its attorneys, on Monday, the 20th day of November, 1916, at 10 o'clock A. M., or as soon thereafter as the matter can be heard, at the courtroom of the above-entitled court in the United States Postoffice Building in the City and County of San Francisco, move the Honorable Court to make an order dissolving the preliminary injunction heretofore made and entered in the above-entitled action on the 22d day of August, 1916, at the hour of 3:30 o'clock P. M.

Said motion will be made upon the ground that the plaintiff has violated and is violating the said injunction in that the said plaintiff has been and is now mining rich and valuable gold ore from the said premises covered by the said preliminary injunction and from the same vein that the defendant was and is restrained from working by means of the provisions of the said preliminary injunction, and the said plaintiff is so as aforesaid working in the same

within the lines of the Belmont Lode Mining Claim drawn vertically downward, which said lode mining claim is the property of and belongs to the Twenty-one Mining Company, the defendant herein.

Upon said motion defendant will rely upon and use all the papers, pleadings, maps and documents on file in said action, this order and the affidavit of J. H. Hunt, which is herewith served upon you, and upon such oral evidence as the defendant may deem advisable to introduce upon the order of the Court.

W. H. METSON,
FRANK WEHE,
Attorneys for Twenty-one Mining Company, a Corporation. [95]

—which said Notice of Motion was based upon the affidavit of J. H. Hunt, which was also served upon the said plaintiff, and which affidavit is in the words and figures following, to wit: [96]

Affidavit of J. H. Hunt.

State of California,
City and County of San Francisco,—ss.

J. H. Hunt, being first duly sworn on oath, deposes and says:

That on the 22d day of August, 1916, at about the hour of 3:30 o'clock P. M. there was issued in the above-entitled cause an injunctive order restraining the defendant, its officers, agents, servants, employees and attorneys and those in active concert or participating with defendant from further working or mining or extracting or removing ore or milling or treating or otherwise disposing of any ore extracted

from any portion of that segment of the vein which is disclosed in the main incline shaft of the plaintiff and in the tunnel and other workings of the defendant between a vertical plane passed through the southerly end line of the Sixteen to One claim, which line is described as commencing at a point whence the quarter section corner between Section 34, Township 19 North, Range 10 East, M. D. M., and Section 3, Township 18 North, Range 10 East, M. D. M., bears 15° 50′ East 431 feet distant; and thence said end line runs south 54° 18′ West 353.7 feet to the southwest corner of said Sixteen to One claim, and another vertical plane situated parallel thereto and distant 750 feet northwesterly therefrom, both of said planes being extended indefinitely in a northeasterly direction.

Affiant further says that he was in the underground workings of the Sixteen to One Mine, Incorporated, on, to wit, the 12th day of November, 1916. That he discovered that within approximately the past thirty days said Sixteen to One Mine, Incorporated, by and through its officers and employees, have excavated and driven an upraise from the main working shaft at a point a short distance below the 300-foot level through country rock for the purpose of connecting said shaft with said 300-foot level at a point some 50 or 60 feet northerly from said shaft. [97]

Affiant further discovered that on the 250-foot level, at a point about 300 feet northerly from the main working shaft of the Sixteen to One Mine, Incorporated, and within the limits and boundary lines

of the Belmont Lode Mining Claim, extended vertically downward (which said Belmont Lode Mining Claim belongs to and is owned by the Twenty-one Mining Company (a corporation), the defendant herein, and upon the same vein which the defendant herein is and has been, by said injunctive order, restrained from working and extracting ore therefrom (as shown by Exhibit "A" attached to the affidavit of Ed. Uren filed herein), the said plaintiff company, the Sixteen to One Mine, Incorporated, by and through its officers and employees, have within approximately the past thirty days excavated an irregular shaped winze or hold 25 feet deep and 40 to 50 feet long, upon the vein and that said plaintiff company has been and it is now engaged in stoping a large and valuable amount of very valuable gold ore commonly known as "high grade" from the side of said winze or hole. That said affiant saw two men engaged in working therein on said 12th day of November, 1916.

Affiant further alleges that in said 250-foot level at a distance of approximately 50 feet beyond said last-mentioned workings and northerly therefrom, the said plaintiff company by and through its officers and employees, has excavated an irregular shaped winze or hole, approximately 50 to 60 feet deep, and that it has been and is engaged in stoping very valuable gold ore commonly known as "high grade" from the side thereof.

That affiant has no means of knowing the total amount in value of the ore extracted from the said last two described workings on the 250-foot level,

but that owing to the richness of the ore which he saw in said workings he believes a very large amount in money value has been taken and extracted from said workings, and charges as a matter of information and belief that, to wit, the amount of Ten thousand dollars ($10,000) has been taken from said workings. [98]

That affiant has been informed by the officers and employees of said Sixteen to One Mine, Incorporated, at said mine that it is the intention of said plaintiff company to continue to mine and extract ore from the workings of said 250-foot level, and that it is also their intention to excavate and drive the tunnel from the 300-foot level to a point beneath said workings and upraise thereto and continue to mine and extract ore from said vein upon an even more extensive scale.

Affiant further says that the above-described workings on the 250-foot level where said plaintiff company has been mining and extracting ore are upon the same vein that defendant company is enjoined and restrained from working and is within the segment thereof covered by said injunctive order. That said vein is the property of the Twenty-one Mining Company and that said workings are within the limits and boundaries of the Belmont Lode Mining Company extended vertically downward, which said claim is the property of the defendant herein.

J. H. HUNT.

Subscribed and sworn to before me this 17th day of November, 1916.

[Seal] FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires April 14, 1917. [99]

The said plaintiff having theretofore obtained an order from the Judge of the above-entitled court shortening the time of the service of said motion to dissolve the preliminary injunction, which said order is in the words and figures following, to wit: [100]

[Title of Court and Cause.]

Order Shortening Time of Notice of Motion to Dissolve Preliminary Injunction.

Good cause appearing therefor, IT IS HEREBY ORDERED that the time for the giving of the Notice of the Motion to Dissolve the Preliminary Injunction rendered in the above-entitled action on the 22d day of August, 1916, be and the same is hereby shortened so that the same may be served on Friday, November 17th, 1916.

WM. C. VAN FLEET,

District Judge. [101]

That the hearing of said matter was postponed from the 20th day of November to the 21st day of November, 1916, at which time the Honorable William H. Hunt, sitting in the place and stead of the Honorable William C. Van Fleet, made the following order:

"Defendants motion to dissolve the preliminary injunction being partially heard, IT IS ORDERED

that the property is to be held in *statu quo* and no work is to be done until the further order of this Court and that the ore extracted by plaintiff be impounded. Ordered that the motion be continued for further hearing before Judge Van Fleet."

That thereafter on the 22d day of November, 1916, Hon. William C. Van Fleet ordered that the defendant's motion to dissolve the preliminary injunction be continued to November 27th, and in the meantime the property involved herein remain in *statu quo.*

That thereafter, on the 27th day of November, 1916, at the hour of 10 o'clock A. M. the said matter was heard by the Honorable William C. Van Fleet; the said plaintiff at that time presenting the affidavit of S. B. Connor in answer to defendant's motion to dissolve the preliminary injunction, which affidavit is in words and figures following, to wit: [102]

[Title Court and Cause.]

Affidavit of S. B. Connor, Filed by Plaintiff in Answer to Defendants' Motion to Dissolve Preliminary Injunction.

State of California,
City and County of San Francisco,—ss.

S. B. Connor, being first duly sworn according to law, deposes and says: That he is the vice-president of the original Sixteen to One Mine, Inc., plaintiff herein, and makes this affidavit in behalf of said plaintiff; that he has read the affidavit of J. H. Hunt filed in support of defendant's motion to dissolve Preliminary Injunction; that early in October, 1916, this plaintiff applied to this Honorable Court for an

order requiring defendant to furnish a bond indemnifying plaintiff against damage suffered by it as a result of refraining from mining on its own vein in the territory covered by the preliminary injunction directed against defendant, and affiant refers to and makes a part of this affidavit the affidavit made by affiant and filed in connection with said motion; that this plaintiff, after the issuance of said injunction, acting under advice of its counsel, had theretofore refrained from entering said territory covered by said injunction, but as evidenced by the affidavit of this affiant filed in support of said motion, this affiant was suffering material damage by reason of its refraining from mining as aforesaid and was not protected by any bond; that this Honorable Court on the 9th day of October, 1916, denied said motion, stating that the matter was not properly before the Court for determination; that thereafter, acting under advice of its counsel, plaintiff commenced to mine extralaterally [103] on the Sixteen to One vein on and in the vicinity of its two hundred fifty foot level, but a short distance from the vertical side line boundaries of its Sixteen to One claim, the place where plaintiff is at work being several hundred feet higher up on the inclination of the vein above the stope in which defendant was working when enjoined by this Court, and at a point remote from the mine workings of defendant;

That the main purpose of the resumption of mining by plaintiff in said territory immediately adjacent to its own vertical boundaries was to induce the defendant, if it was so disposed, to apply to this

Court for a counter-injunction, to prevent plaintiff from continuing mining operations, and as a condition of the granting of such counter-injunction, that it be directed to furnish a good and sufficient bond to adequately protect plaintiff from the damage suffered by it as a result of the consequent cessation of its mining operations;

That such mining as has been done by plaintiff as aforesaid has been done in good faith and under advice of counsel, and as a result of its desire to be adequately protected by a bond as aforesaid, and that an accurate account of the tonnage and value of all ore extracted has been and is being kept by plaintiff; that the total gross returns from the ore so extracted by plaintiff since the date when mining was resumed by plaintiff on or about October 11, 1916, is approximately seven thousand dollars ($7,000); that in the vicinity of the three hundred foot level and its main working shaft, said plaintiff has cut a pocket a few feet in extent into the country rock and away from the vein, and that this was done for the purpose of handling the ore to better advantage, and is in the line of ordinary mining operations and is such work as would universally [104] be done in mining in depth on a vein similarly situated, and that such work has not damaged defendant in any way;

That plaintiff for some time prior to the commencement of this action had been working and mining on its two hundred fifty level and vicinity in the orderly progress of its operations;

That before resuming mining operations on and in vicinity of said level, this plaintiff, on or about

October 10, 1916, caused defendant to be notified in writing of its intention "to proceed with the extraction of ore within their (Sixteen to One) extralateral planes," and further notified defendant that the object of such mining was to raise squarely the question as to whether or not plaintiff was entitled to the protection of a bond;

That plaintiff immediately thereafter resumed its mining operations and defendant had every opportunity to ascertain this fact, as plaintiff has at all times afforded defendant every opportunity of entering and examining its mine workings and operations, and defendant's representatives have repeatedly taken advantage of this opportunity and entered said workings, and its superintendent having been in every few days defendant was aware of such mining by plaintiff long prior to the 12th day of November, 1916;

That since the issuance of the preliminary injunction by this Court, this plaintiff has actively prosecuted work with the object of developing the facts with reference to the position of the apex of the Sixteen to One vein, with reference to the boundaries of the Sixteen to One claim, and that such development has further established the fact that the apex of the Sixteen to One vein exists within the Sixteen to One claim from the point [105] where it crosses the southerly end line of the Sixteen to One claim for a distance of approximately seven hundred fifty feet northwesterly, and in close proximity to the lode line of said claim, and that an upraise on the vein from the extreme end of the Sixteen to One Tunnel #2

has followed the Sixteen to One vein up, so that the top of the upraise is now close to the surface; establishing the apex of the Sixteen to One vein to be well within the boundaries of the claim, at a point approximately seven hundred fifty feet northwesterly from the southerly end line of the Sixteen to One claim, and near the lode line of said claim;

That defendant's theory that the Sixteen to One vein departs through the westerly side line of the Sixteen to One claim approximately five hundred feet northwesterly from the southerly end line of the Sixteen to One claim, as represented on Map Exhibit "A" attached to the Uren affidavit filed by defendant, has been disproved by the physical disclosures made on the vein itself, at or near the apex by these workings prosecuted by plaintiff since the issuance of the preliminary restraining order;

That Map Exhibit "B" attached to said Uren affidavit and filed by defendant in resisting plaintiff's application for a preliminary injunction, illustrates the contention there made by defendant that the Sixteen to One vein apexing within the Sixteen to One claim was not the same vein disclosed in the Twenty-one tunnel, and embracing the ore bodies in dispute on which defendant was mining when enjoined, but as indicated on said map, said vein disclosed in said Twenty-one tunnel on its inclination upward departed from the Sixteen to One incline shaft before said vein reached the 400-foot level in said shaft and turning abruptly at almost a right angle, thence extended at a very steep and almost vertical direction to the surface; [106]

That at that time there were no actual workings or vein exposures to establish this theory assumed by defendant, but that since said affidavit was filed, plaintiff has prosecuted work on the Sixteen to One vein so that now this vein is exposed and is demonstrated to actually exist continuously from the connection made with defendant's upraise from the Twenty-one tunnel at the bottom of the Sixteen to One incline shaft up to the four hundred foot level, and the Sixteen to One vein is shown to actually exist continuously through the intermediate territory which on said Uren Exhibit "B" is represented as not containing any downward extension of the Sixteen to One vein, but which shows that defendant's theory at the time involved a termination of the Sixteen to One vein in a downward direction at the four hundred foot level, and below the intervening break and cessation of the Sixteen to One vein there was a turning up of an entirely distinct vein found in the Twenty-one workings; and said Exhibit "B" led to the unavoidable inference that defendant claimed and represented that the vein found in the Sixteen to One workings at and above the Sixteen to One four hundred foot level had no connection whatsoever with the vein found in the Twenty-One workings below, whereas the actual exposure of the vein continuously through this intermediate territory by plaintiff's recent workings entirely disproves this earlier theory of defendant that the vein exposure above and below the said four hundred foot level constitute two separate and distinct veins, and this fact of vein identity is now admitted in the affidavit

of said J. H. Hunt above referred to, since he has alleged in that affidavit that the vein now being worked on [107] plaintiff's two hundred fifty foot level is the same vein that is exposed in defendant's Twenty-One tunnel and workings.

S. B. CONNOR.

Subscribed and sworn to before me this 21st day of November, 1916.

[Seal] LEWIS E. BURKE,

Notary Public in and for the City and County of San Francisco, State of California. [108]

That the affidavit referred to in the foregoing affidavit of S. B. Connor is in the words and figures following, to wit:

[Title of Court and Cause.]

Application and Affidavit in Support of Motion to Compel Defendant to Furnish Bond to Secure Plaintiff Against Damage.

State of California,

City and County of San Francisco,—ss.

S. B. Connor, being first duly sworn, deposes and says that he is the vice-president of the plaintiff in the above-entitled action and makes this affidavit on behalf of said plaintiff. That he refers to the Bill of Complaint and Answer in the above-entitled cause and the various affidavits and other documents heretofore filed herein and that it will appear therefrom that the plaintiff claims that there is a vein called the Sixteen to One vein, which apexes in the Sixteen to One claim for a distance of at least seven hundred and fifty feet (750) feet northerly of the

southerly end line of said claim, which end line is crossed by said apex. That said vein dips easterly and underneath surface ground claimed by defendant. That defendant had penetrated this vein by means of its Twenty-One tunnel and was engaged in working on this vein on its dip. That this plaintiff secured a restraining order from this Honorable Court and later on or about the 22d day of August, 1916, secured a Preliminary Injunction from this Honorable Court, which injunction ordered the defendant, its officers, etc., to cease working or mining, etc., on the vein in dispute between a vertical plane passed through the southerly end line of the Sixteen to One claim and another vertical plane situated parallel thereto and seven hundred and fifty (750) feet distant northwesterly therefrom. That one of the conditions of said Preliminary Injunction was that plaintiff should enter into a good and sufficient bond in [109] the sum of thirty thousand (30,000) dollars, which was duly furnished by plaintiff and approved by this Honorable Court and filed. That during the period of time that said Restraining Order was in force and at the argument made before this Honorable Court on the question as to whether a Preliminary Injunction should issue, said defendant, through its attorneys, urged that the plaintiff be not permitted to work this ore deposit in question between the planes described in said Restraining Order later adopted in said injunction. Immediately upon the issuance of said Restraining Order this plaintiff ceased work outside of the vertical boundaries of its Sixteen to One claim and

within said vertical planes except for the purpose of carrying on exploratory work necessary to develop its contention as to the physical conditions of said order deposit, and except for a limited period when it extracted a small amount of ore from beneath the surface of the Ophir claim, which claim is not owned by the defendant. That upon the issuance of the Preliminary Injunction, plaintiff, upon advice of its counsel, ceased work entirely within said vertical planes with the exception of carrying on litigation work as aforesaid, and that in the conduct of said litigation work it has kept an accurate record of any vein material necessarily extracted in the progress of these workings. That the said Sixteen to One vein dips from the Sixteen to One claim in an easterly direction and passes beyond the easterly side boundary at the Sixteen to One claim underneath adjoining claims and is the main vein of the Sixteen to One claim and that within the vertical boundaries of the Sixteen to One claim, there is very limited opportunity for discovering and developing ore within these vertical surface boundaries, but that the main opportunity for developing ore and keeping the mining plant of said company working properly is to pursue said vein extralaterally and within said planes prescribed in said Preliminary [110] Injunction. That defendant makes the contention that said Preliminary Injunction operates to prevent the plaintiff as well as the defendant from operating and mining within said ground while it is in force. That from purely euitable considerations this plaintiff under advice of its

counsel has heretofore refrained from mining in any part of said territory included between said planes mentioned in said injunction even including the territory lying vertically beneath the surface of the Ophir claim, to which surface said defendant asserts no claim of ownership. That for plaintiff to further refrain from conducting mining operations in said territory without being protected by a bond to be furnished by defendant which shall secure the plaintiff from all costs or damages that it may suffer by virtue of its failure to secure a continuous supply of ore, which it will not be able to do without entering the territory in question will result in great hardship and damage to plaintiff. That this defendant has existing on its Sixteen to One claim a plant of a total value of $25,000 dollars used for the purpose of extracting and treating ores which can not be economically operated without access to the ores in question. That it has several hundred feet of tunnels, incline, shaft and other workings which must be kept opened up and timbered. That it has an effective organization of reliable miners which it will have to either keep employed to a considerable financial disadvantage or will have to discharge and thus disrupt its organization. That said mining and milling plant will continue to depreciate at the average rate that such plants depreciate and that its capital investment indicated will be idle, not earning any income during the period of this litigation, and that plaintiff's loss and damage from these various causes will be as great as any loss or damage that might be suffered by defendant during the period

this litigation [111] may continue, and that therefore as a matter of equity it is equally important and just that the defendant in this action be required to furnish and file a bond in an amount equal to that already furnished by the plaintiff in this action, and protecting the plaintiff against any loss or damage which the plaintiff may suffer by reason of its refraining from extracting any of the ores lying in that segment of the ore bodies in dispute embraced within the vertical planes described in the said Preliminary Injunction.

WHEREFORE, this affiant in behalf of the plaintiff prays that this Honorable Court issue an order directed to the defendant and ordering it to furnish and file a bond in the sum of thirty thousand dollars ($30,000) with sureties to be approved by a Judge of the said court and conditioned upon the payment of such costs and damages as may be incurred or suffered by the plaintiff or by any party who may be found to have been wrongfully injured by reason of said plaintiff's refraining from mining ores in the disputed territory and consequent inability to operate its plant as hereinbefore more fully set forth, pending this litigation, and plaintiff prays for such further relief as to this Court may seem meet and equitable.

S. B. CONNOR,

As Vice-President of and in Behalf of the Plaintiff.

Subscribed and sworn to before me this 3d day of October, 1916.

EUGENE W. LEVY,

Notary Public in and for the City and County of San Francisco, State of California.

WM. E. COLBY,

GRANT H. SMITH,

Attorneys for Plaintiff. [112]

That no other evidence was offered by either party upon the hearing of said motion. That said motion was thereupon argued by counsel for defendant and by counsel for the plaintiff and by the Court was taken under submission.

That thereafter, on the 15th day of December, 1916, the Court made its order refusing to dissolve the preliminary injunction theretofore granted to plaintiff in the said action and ordering that said motion be denied but that a cross-injunction might be had restraining the plaintiff pending the suit, from further prosecuting mining operations on the disputed vein upon defendant giving a bond in the sum of thirty thousand dollars ($30,000), which said order is in words and figures following, to wit: [113]

At a stated term of the Southern Division of the District Court of the United States of America for the Northern District of California, Second Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 15th day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 292—EQUITY.

ORIGINAL SIXTEEN TO ONE MINE, INC.

vs.

TWENTY-ONE MINING CO.

Order Denying Motion to Dissolve Preliminary Injunction, etc.

Defendant's motion to dissolve the preliminary injunction heretofore granted plaintiff, having been submitted and being now fully considered and the Court having filed its memorandum opinion, it is ordered that said motion be denied but a cross-injunction may be had restraining the plaintiff pending the suit from further prosecuting mining operations on the disputed vein upon defendant giving a bond in the sum of $30,000 to indemnify plaintiff against any damages suffered by plaintiff for such restraint. [114]

That defendant now excepts to the said order and presents the foregoing as his Bill of Exceptions in said proceeding and prays that the same may be set-

tled and allowed and signed and certified by the Judge as provided by law.

WM. H. METSON,
FRANK R. WEHE,
BRUCE GLIDDEN,
Attorneys for Defendant.

Dated December 16th, 1916.

The foregoing Bill of Exceptions is correct and the same may be settled and allowed.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.

December 22d, 1916.

The foregoing Bill of Exceptions is hereby approved, settled and allowed.

WM. C. VAN FLEET,
Judge.

December 23d, 1916.

[Endorsed]: Filed Dec. 23, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [115]

[Title of Court and Cause.]

Stipulation and Order Re Exhibits "A" and "B" Attached to Affidavit of Ed Uren, etc.

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties to the above-entitled suit that the Exhibits "A" and "B" attached to the affidavit of Ed Uren filed by the defendant upon the application of plaintiff for a preliminary injunction in said suit, may be deemed to be and treated as a part of the defendant's Bill of

Exceptions on appeal from the order refusing to dissolve the preliminary injunction in said suit, the same as though the said Exhibits "A" and "B' had been fully set forth and incorporated in said Bill of Exceptions.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.
W. H. METSON,
FRANK R. WEHE,
BRUCE GLIDDEN,
Attorneys for Respondent.

It is so ordered.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 23, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [116]

[Title of Court and Cause.]

Petition for Appeal from Order Denying Motion to Dissolve Preliminary Injunction, etc.

The above-named defendant, Twenty-one Mining Company, considering itself aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause, under date of December 15, 1916, wherein and whereby the above-entitled court denied the motion of defendant to dissolve the preliminary injunction theretofore made and entered in said cause on the 22d day of August, 1916, and ordering further that a "cross-injunction might be had by the defendant restraining the plain-

tiff, pending the suit, from further prosecuting mining operations on the disputed vein, upon defendant giving a bond in the sum of thirty thousand dollars ($30,000) to indemnify the plaintiff against damages suffered by plaintiff for such restraint," does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said order for the reasons set forth in the assignment of errors which is filed herewith; and prays that this petition for its said appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

W. H. METSON,
FRANK R. WEHE,
BRUCE GLIDDEN,
Attorneys for Defendant, Petitioner.

[Endorsed]: Filed Dec. 22, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [117]

[Title of Court and Cause.]

Assignment of Errors.

Comes now the above-named defendant, Twenty-one Mining Company, and files the following assignment of errors upon which it will rely on its appeal from the order made by the above-entitled court in the above-entitled cause on the 15th day of December, 1916, refusing to dissolve the preliminary injunction theretofore issued in said cause, and ordering that the defendant may have a cross-injunction restrain-

ing the plaintiff, pending the suit, from further prosecuting mining operations on the disputed vein, conditioned upon its filing bond in the sum of thirty thousand dollars ($30,000) to indemnify plaintiff against any damages suffered by plaintiff for such restraint. [118]

I.

The Court erred in refusing to dissolve the preliminary injunction *pendente lite* for the reason that the preliminary injunction was issued to maintain the *status quo pendente lite* and to this end was equally binding upon the defendant and the plaintiff.

II.

The Court erred in denying the motion to dissolve as the evidence offered on the hearing of the motion showed that the plaintiff was actually working in the segment of the vein in which the defendant was enjoined from working and which was the vein in dispute.

III.

The Court erred in denying defendant's motion to dissolve the preliminary injunction heretofore entered in this suit at the instance of complainant, for the reason that it appeared from the evidence submitted upon said motion that the complainant was actually working within the segment of the vein and beneath the surface lines of the defendant, being the same area in which defendant was enjoined from working. By its refusal to dissolve said injunction, therefore, the said District Court has given the complainant by two steps, an injunction which enjoined defendant out of and complainant into possession,

tied the hands of defendant with reference to working its own property and at the same time granted the complainant the right to work out the ore within the enjoined area. The result of which order will be that at the termination of this litigation irremediable damage will have been committed, and the subject matter of the suit pending the litigation been destroyed by reason of this violation of the *status quo* by complainant.

IV.

The Court erred in ordering that the defendant might have a cross-injunction restraining the plaintiff *pendente lite* from prosecuting mining in the disputed vein, conditioned upon its giving a bond in the sum of thirty thousand dollars ($30,000) to indemnify the plaintiff for any damages it might suffer by such restraint. **[119]**

V.

The Court erred in not ordering the plaintiff to maintain the *status quo* as a condition to a denial of the motion to dissolve, as it appeared to the Court that plaintiff of its own motion had enjoined the defendant out of possession of the property in dispute, and therefore if the injunction was sustained the plaintiff should not be left in a position to violate it.

WHEREFORE, this defendant prays that the said interlocutory order of said Court may be reversed and that said District Court for the Northern District of California, Second Division, may be ordered to enter a decree dissolving the said preliminary injunction in accordance with the prayer of the motion of defendant in that behalf, and that the

defendant have such other relief as it is entitled to in accordance with law.

W. H. METSON,
FRANK R. WEHE,
BRUCE GLIDDEN,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 22, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [120]

[Title of Court and Cause.]

Order Allowing Appeal.

Upon motion of W. H. Metson, one of the attorneys for the defendant, and on filing the petition of the Twenty-one Mining Company, together with an assignment of errors,—

IT IS ORDERED that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the interlocutory order entered December 15, 1916, refusing to dissolve the preliminary injunction theretofore entered in said cause by this Court, but ordering that defendant might have a cross-injunction restraining the plaintiff pending the suit from further prosecuting mining operations on the disputed vein, upon giving a bond in the sum of thirty thousand dollars ($30,000) to indemnify the plaintiff against damages suffered by the plaintiff for such restraint; that the amount of the bond upon said appeal be and hereby is fixed at the sum of three hundred dollars, and that a certified transcript of the record and proceedings herein

be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Dec. 22, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [121]

32501–16.

UNITED STATES FIDELITY AND GUARANTY COMPANY.
Capital Paid in Cash $2,000,000.
Total Resources Over $6,000,000.
Home Office:
BALTIMORE, MD.

In the District Court of the United States, Northern District of California, Second Division.

ORIGINAL SIXTEEN TO ONE MINE, INC., a Corporation,
Plaintiff,
vs.
TWENTY-ONE MINING CO., a Corporation,
Defendant.

Bond on Appeal from Order Denying Motion to Dissolve Injunction.

Whereas, in an action in the District Court of the United States, Northern District of California, Second Division, an Order was on the 15th day of December, 1916, made, entered and filed in favor of the plaintiff and against the defendant, refusing to dissolve a preliminary injunction, etc.; and

Whereas, the said defendant is dissatisfied with the said Order, and is desirous of appealing therefrom to the United States Circuit Court of Appeal for the Ninth Circuit of the Northern District of the State of California;

NOW, THEREFORE, in consideration of the premises and of such appeal the United States Fidelity & Guaranty Company, a corporation, having its principal place of business in the City of Baltimore, State of Maryland, and having a paid up capital of two million dollars, duly incorporated under the laws of the State of Maryland for the purpose of making, guaranteeing and becoming surety on bonds and undertakings, and having complied with all the requirements of the laws of the State of California respecting [122] such corporations, does hereby undertake in the sum of three hundred dollars, and promise on the part of the appellant that said appellant will pay all damages and costs which may be awarded against it, on said appeal, or on a dismissal thereof, not exceeding the aforesaid sum of three hundred dollars, to which amount it acknowledges itself bound.

Dated at San Francisco, this 22d day of December, A. D. 1916.

UNITED STATES FIDELITY & GUARANTY COMPANY.

[Corporate Seal] By H. V. D. JOHNS,
By B. F. CATOR,
Attorneys in Fact.

Approved:
WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 23, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [123]

[Title of Court and Cause.]

Stipulation as to What Shall Constitute Record on Appeal.

IT IS HEREBY STIPULATED between the plaintiff and the defendant, by and through their respective attorneys, that the transcript of record on appeal from the order denying the motion to dissolve the preliminary injunction, etc., shall be made up of the following papers, to wit:

Bill of Complaint;

Affidavit of Fred Searles;

Application for Restraining Order and Order of Inspection;

Affidavit of George O. Scarfe;

Answer to Bill of Complaint;

Affidavit of J. H. Hunt, dated August 10, 1916;

Affidavit of J. H. Hunt, dated August 14, 1916;

Affidavit of Ed. Uren, dated August 8, 1916;

Counter-affidavit of S. B. Connor, dated August 14, 1916;

Counter-affidavit of Andrew C. Lawson, dated August 15, 1916;

Counter-affidavit of S. B. Connor, dated August 16, 1916;

Counter-affidavit of William A. Simpkins, dated August 16, 1916; [124]

Notice of Motion to compel defendant to furnish bond pending litigation;

Order of Court on said motion;

Bill of Exceptions;

Stipulation of counsel as to Bill of Exceptions;

Stipulation of counsel as to what shall constitute record;

Stipulation of counsel as to Printing Record;

Stipulation of counsel as to Original Maps;

Petition for Allowance of Appeal;

Assignment of Errors;

Order Allowing Appeal;

Bond on Appeal;

Citation on Appeal;

Praecipe for the Transcript.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.
FRANK R. WEHE,
W. H. METSON,
BRUCE GLIDDEN,
Attorneys for Defendant.

Dated December 28, 1916.

So ordered:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[125]**

[Title of Court and Cause.]

Stipulation Re Printing of Record.

IT IS HEREBY STIPULATED AND AGREED that in the printing of the record herein for the consideration of the Court on appeal from the order

denying the motion of defendant to dissolve the preliminary injunction, etc., heretofore entered in the above-entitled cause, the title of the court and cause in full on all of the pages shall be omitted except on the first page and inserted in lieu thereof "Title of Court and Cause."

Dated San Francisco, Decemer 28, 1916.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.
FRANK R. WEHE,
W. H. METSON,
BRUCE GLIDDEN,
Attorneys for Defendant.

So ordered:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. **[126]**

[Title of Court and Cause.]

Stipulation In Re Original Exhibits.

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties to the above-entitled suit that all of the original exhibits, being maps either attached to or by reference made a part of the affidavits of Fred Searls, George O. Scarfe and Ed Uren, heretofore filed on the motions for a restraining order or a preliminary injunction in the above-entitled suit, may be transmitted to the Circuit Court of Appeals and be deemed and considered a

part of the record on appeal from the order of the Court denying the motion to dissolve the preliminary injunction, etc., the same as though they were incorporated in said record.

Dated San Francisco, Dec. 28, 1916.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff.
FRANK R. WEHE,
W. H. METSON,
BRUCE GLIDDEN,
Attorneys for Defendant.

So ordered:

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [127]

[Title of Court and Cause.]

Praecipe for Record on Appeal.

To the Clerk of the Above-entitled Court:

You are hereby directed to make and prepare the record on appeal in the above-entitled cause from the order heretofore made and entered on December 15, 1916, denying the motion of defendant to dissolve the preliminary injunction heretofore issued in said cause, etc., and have the same in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the 21st day of January, 1917. In preparing said transcript it shall be made up of the following papers, to wit:

Bill of Complaint;

Affidavit of Fred Searles;

Application for Restraining Order and Order of Inspection;

Affidavit of George O. Scarfe;

Answer to Bill of Complaint;

Affidavit of J. H. Hunt, Dated August 10, 1916;

Affidavit of J. H. Hunt, Dated August 14, 1916;

Affidavit of Ed. Uren, Dated August 8, 1916;

Counter-Affidavit of S. B. Connor, Dated August 14, 1916; [128]

Counter-Affidavit of Andrew C. Lawson, Dated August 15, 1916;

Counter-Affidavit of S. B. Connor, Dated August 16, 1916;

Counter-Affidavit of William A. Simpkins, Dated August 16, 1916;

Notice of Motion to Compel Defendant to Furnish Bond Pending Litigation;

Order of Court on Said Motion;

Bill of Exceptions;

Stipulation of Counsel as to Bill of Exceptions;

Stipulation of Counsel as to What Shall Constitute Record;

Stipulation of Counsel as to Printing Record;

Stipulation of Counsel as to Original Maps;

Petition for Allowance of Appeal;

Assignment of Errors;

Order Allowing Appeal;

Bond on Appeal;

Citation on Appeal;
Praecipe for the Transcript.

FRANK R. WEHE,
W. H. METSON,
BRUCE GLIDDEN,
Attorneys for Defendant.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [129]

[Title of Court and Cause.]

Clerk's Certificate to Record on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing one hundred twenty-nine (129) pages, numbered from 1 to 129, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $74.90; that said amount was paid by defendant; and that the original citation issued herein is hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 3d day of January, A. D. 1917.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk. [130]

[Title of Court and Cause.]

Citation on Appeal.

United States of America,
Northern District of California,
Second Division.

The President of the United States of America, to Original Sixteen to One Mine, Inc. (a Corporation), Plaintiff:

You are hereby cited and admonished to appear and be at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal made and entered in the above-entitled cause, in which the original Sixteen to One Mine, Inc. (a Corporation), is plaintiff and respondent, and Twenty-One Mining Company, (a Corporation), is defendant and appellant in said appeal to show cause if any there be, why the interlocutory order made and entered in said cause on the 15 day of December, 1916, refusing to dissolve the preliminary injunction theretofore entered in said suit, and ordering that the defendant may have a cross-injunction restraining the plaintiff, pending the suit, from further prosecuting mining operations on the disputed vein, conditioned upon its giving a bond in the sum of Thirty Thousand Dollars ($30,000) to indemnify plaintiff against any damages suffered by plaintiff, should not be set aside, corrected and reversed and why speedy justice should [131] not be done to the defendant, Twenty-one Mining Company, a corporation.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 22d day of December, one thousand nine hundred and sixteen.

WM. C. VAN FLEET,
District Judge for the Northern District of California, Second Division.

Service of a copy of the within and foregoing citation admitted this 22d day of December, 1916, at the City and County of San Francisco, State of California.

WM. E. COLBY,
GRANT H. SMITH,
Attorneys for Plaintiff and Respondent.

[Endorsed]: No. 292—In Equity. In the District Court of the United States Northern District of California, Second Division. Original Sixteen to One Mine, Inc., Plaintiff, vs. Twenty-one Mining Company, Defendant. Citation on Appeal. Filed Dec. 23, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [132]

[Endorsed]: No. 2909. United States Circuit Court of Appeals for the Ninth Circuit. Twenty-One Mining Company, a Corporation, Appellant, vs. Original Sixteen to One Mine, Inc., a Corporation, Appellee. Transcript of the Record. Upon Appeal

from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed January 3, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.